

## EXECUTIVE SUMMARY

The Task Force on Trial Court Employees (the task force) was statutorily created by the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) to make recommendations to the State Legislature for the establishment of a personnel system for the trial court employees of California. This report discusses the development of and the considerations behind the task force's recommendations for the various components of a personnel system for trial court employees that has "uniform statewide applicability."<sup>1</sup>

### Definition of Trial Court Employee

Although the Act (also commonly referred to as AB233) mandates that the task force design a new personnel system for trial court employees, nowhere in the statute is the term *trial court employee* defined. One of the first undertakings of the task force, therefore, was to establish a working definition of *trial court employee*. The task force's definition of this term can be found in **Part III** of this report, following the introduction (**Part I**) and information regarding the process the task force used in developing its recommendations (**Part II**).

### Employment Status Definitions and Recommendations

The Act also requires that the task force recommend an employment status for trial court employees: state, county, court, or other. Just as the statute does not define *trial court employee*, it does not define any of these four employment status options. Thus, the task force created working definitions of the various employment status options.

In defining the employment status options, the task force assumed that any trial court structure would have to be consistent with the judicial branch of government and independent of the executive and legislative branches. Likewise, the task force assumed that state employment would be something different from trial court employment, which, in turn, would be different from county employment. Consistent with the legislation, all of the status options emphasized local trial court management and assumed a financing structure with the state as the principal financial source. The various employment status options as defined and considered by the task force are discussed in **Part IV**.

After considering all the employment status options and weighing their impact upon the various components of the recommended personnel structure, the task force unanimously recommends that trial court employees be court employees and have court employment status except for certain benefits, where they are

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<sup>1</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, § 77605(b).

specified and designated as county employees. A more complete discussion of the task force's recommendations regarding employment status can be found in **Part V** of this report.

### **Personnel System Components**

Every government personnel system includes basic components such as classifications to describe job duties and minimum qualifications, salary guidelines to accompany those classifications, descriptions of employee protection policies (for example, at will, cause, and so on), benefit descriptions, and provisions for employee representation. The task force was charged with studying and making recommendations for these key personnel structure components. In making its recommendations, the task force concluded that broad directives were most appropriate, as detailed recommendations would involve policy decisions outside the purview of the task force.

The task force has written recommendations (which the task force refers to as models) for the following components of a new personnel structure for trial court employees: (1) classification, (2) salary, (3) meet and confer, (4) employment protection system, (5) employment, selection, and advancement system, (6) personnel file access, (7) defined-benefit retirement plan, (8) accrued leave benefits, (9) benefits: group insurance and other employer-provided benefits, (10) retiree group insurance benefits, (11) federally regulated benefits, (12) deferred compensation plan benefits, and (13) transition. The complete set of recommendations, which together with the employment status and governance model combine to form the new trial court employee personnel system, can be found in **Part VI** of this report.

As mentioned earlier, in formulating its recommendations, the task force first examined the impact of each component in relation to the various employment status options. The history of the development of the task force's preliminary recommendations and supporting considerations for each of the personnel structure components can be found in **Part VII**.

### **Common Assumptions and Objectives**

Prior to formulating its recommendations for each component of the new personnel system for trial court employees, the task force identified working assumptions and objectives to serve as guidelines. Several of these assumptions and objectives are common to all of the recommended personnel component models.

Common assumptions include:

- State funding levels will not significantly change as a result of the new personnel structure;
- The new trial court employee personnel system will not result in changes to federal law; and
- Existing state law may require changes as a result of implementation of the trial court personnel system.

Common objectives include:

- Do not reduce the level of benefits of trial court employees as a result of the implementation of the trial court personnel system;
- Achieve a system with local flexibility; and
- Achieve a system with statewide applicability.

### **Advisory Vote**

The Act requires the task force to “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county”<sup>2</sup> to determine employees’ preferences in relation to the different employment status options of state, court, and county. The task force originally planned to conduct the employee advisory vote before issuing its final report. However, because of the volume and complexity of issues that needed to be resolved prior to the final report, the task force realized it could not finalize its decisions on these issues in time to complete the vote in advance of the final report scheduled for release in December 1999. In keeping with its legislative mandate, the task force is recommending to the Legislature a method for conducting the employee advisory vote. More detailed information regarding the task force’s recommendations for the employee advisory vote can be found in **Part VIII**.

### **Trial Court Employee Survey and Related Documentation**

To make informed recommendations regarding the most appropriate personnel structure for trial court employees, the Act requires the task force to conduct a survey of personnel and benefits systems currently in place in the trial courts. The survey had to obtain information on current trial court employees’ classifications, salaries, retirement benefits, health benefits, labor agreements, and other related data. **Part IX** of this report contains more specific information regarding the trial court employee survey. Part IX also discusses the task force’s duty to document existing statutory, constitutional, and other provisions related to classification,

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<sup>2</sup> *Ibid*, § 77603(h).

compensation, and benefits of trial court employees (see **Appendix** for more specific information on these provisions).

### **Ongoing Work of the Task Force**

While this report represents the final recommendations of the task force, two areas remain where the work of the task force will continue. These two areas are (1) drafting legislation and (2) education. The task force will continue to meet the first three months of 2000 to focus on these two issues. See **Part X** for more detailed information on the ongoing work of the task force.

### **General Conclusions**

While it is important to read each section of this report to fully understand the task force's recommendations, some general assessments can be made regarding the task force's recommendations as a whole. In general, the task force recommends a new personnel system that:

- Achieves a system with local flexibility yet statewide applicability;
- Creates a system where state funding levels will not significantly change as a result of the new personnel structure;
- Designates trial court employees as court employees with court employment status, except for certain benefits where trial court employees are specified and designated as county employees;
- Maintains employees' current classifications and salaries upon implementation;
- Does not reduce the level of benefits of trial court employees as a result of the implementation of the trial court personnel system;
- Maintains local court control over budget and personnel decisions;
- Includes discipline for cause, progressive discipline, and specified evidentiary due process hearing procedures as part of all trial court employees' employment protection system, with certain exceptions (see Part VI.C, "Employment Protection System," for more detail);
- Includes an employment, selection, and advancement system based on merit as part of the new personnel system, with certain exceptions (see Part VI.D, "Employment, Selection, and Advancement System," for more detail);
- Provides for a preliminary procedure for relief on labor relations issues before petitioning the Court of Appeal;
- Does not alter the means by which memoranda of understanding or personnel policies, procedures, and plans related to trial court employees are modified; and

- Allows sufficient transition periods to implement the new system as smoothly as possible.

In summary, this report intends to inform the various interested individuals and entities as to the task force's recommendations for a new trial court employee personnel system. This report also discusses the considerations behind the task forces recommendations for a personnel system with uniform statewide applicability.

## **PART I**

### **BACKGROUND AND INTRODUCTION**

This report contains the findings and recommendations of the Task Force on Trial Court Employees with respect to the issues listed in Government Code section 77603. This report outlines the framework of the recommended trial court employee personnel structure and provides information about how the task force developed its recommendations. This report is being distributed to the Governor, the Legislature, local and state employee organizations, the counties, and the judiciary.

#### **Background and Statutory Mandate**

For many years prior to 1997, trial courts sought an effective and stable financing system that would provide equal access to justice for all California citizens, regardless of the financial health of individual counties. On September 13, 1997, the California Legislature passed the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) and established the state's primary responsibility for funding trial court operations. The Governor signed the bill into law on October 13, 1997.

The Act established a Task Force on Trial Court Employees to lay the foundation for a personnel structure for all trial courts of California. The task force is charged in the Act with "recommending an appropriate system of employment and governance for trial court employees."<sup>3</sup> To recommend a personnel structure for trial court employees, the task force was responsible for studying key personnel components, including such issues as employment status; classification; salary; health, retirement, and other benefits; bargaining procedures; and functions performed by counties for the courts.

The Legislature stated its intent to adopt a plan to transition all existing court employees to an appropriate employment status, recognizing the state's assumption of trial court costs.<sup>4</sup> Under the new funding structure, trial court employees' employment status is not clearly defined. Many employees think they are county employees, many think they are court employees, and still others think they have become state employees.

The Act mandates the task force, "[t]o consider providing courts in each county the option for employees to transition to the status of employees of the state, the local court or, with the concurrence of the county, continuation of the status as

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<sup>3</sup> Gov. Code, § 77600.

<sup>4</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, § 3(g), (2).

county employees. . . .”<sup>5</sup> Thus, a key element of the task force’s charge is to recommend to the Legislature an employment status for trial court employees, whether it be state, court, county, or other. The task force unanimously recommends that trial court employees be court employees and have court employment status except for certain benefits where they are specified and designated as county employees.

### **Task Force Membership**

The Act created an 18-member task force and specified the terms of its membership. As indicated specifically by the Act,<sup>6</sup> the membership is as follows:

- Four representatives of the trial courts, appointed by the Chief Justice, representing two urban, one suburban, and one rural court;
- Four representatives of counties, appointed by the Governor from a list of nominees submitted by the California State Association of Counties;
- Three representatives appointed by the Senate, of which two represent trial court employee organizations;
- Three representatives appointed by the Speaker of the Assembly, of which two represent trial court employee organizations;
- The Director of the Department of Personnel Administration, or a designee;
- The Chief Executive Officer of CalPERS, or a designee;
- The Director of Finance, or a designee; and
- An appellate court justice to serve as a nonvoting chair.

The Judicial Council of California, Administrative Office of the Courts (AOC), is designated in the Act to provide staff support to the task force.<sup>7</sup> The Judicial Council of California, chaired by the Chief Justice, is a constitutionally created body that provides policy direction to the courts. The Judicial Council also acts in conjunction with the Governor and state Legislature on legislation regarding court practices, administration, and procedures. The AOC is the staff agency for the Judicial Council and provides staff support to the task force. The California State Association of Counties and the Legislative Analyst have provided additional staff support to the task force.<sup>8</sup>

### **Task Force Duties**

The Act mandates that the task force perform the following duties:<sup>9</sup>

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<sup>5</sup> Gov. Code, § 3 (g) (3).

<sup>6</sup> Gov. Code, §§ 77601(a), (h).

<sup>7</sup> Gov. Code, § 77602.

<sup>8</sup> *Ibid.*

<sup>9</sup> Gov. Code, §§ 77603(a), (i).

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine the costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;
- Document existing constitutional, statutory, and other provisions relating to the classification, compensation, and benefits of court employees;
- Identify functions relating to trial courts that are provided by county employees;<sup>10</sup>
- Examine and outline issues relating to various options for employment status (county, court, state, and other);
- Prepare a method for submitting the issue of employment status to an advisory vote of trial court employees; and
- Recommend a personnel structure for trial court employees.

To fulfill its charge, the task force considered the variation in and diversity of personnel systems in California trial court systems, including differences in retirement systems, benefits, status, and local personnel issues. In making its recommendations, the task force took into consideration the needs of the entire court system, including 226 municipal court judges, 1,254 superior court judges, and approximately 18,000 court employees in 98 courts in 58 counties, each court system having a different classification system, different salaries, different benefits, different retirement systems, and different memoranda of understanding.

A major objective of the task force was to minimize the disruption of the trial court workforce and protect rights accrued by employees under their current systems. The legislative intent that no provision of the Act should reduce the salaries or benefits of trial court employees was a guiding principle in shaping the recommendations of the task force.<sup>11</sup>

### **Judicial Council Duties**

The Act specifies that the Judicial Council, after giving consideration and due weight to the report of the task force, submit findings and recommendations to establish a system of uniform court employee classifications, which may provide for local flexibility.<sup>12</sup> After considering the recommendations of the task force, the Judicial Council will create broad classifications that provide courts and employees with maximum flexibility.

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<sup>10</sup> The task force interprets the Act to mean county employees who are not court employees.

<sup>11</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, §§ 3(g), (1).

<sup>12</sup> Gov. Code, § 77605(a).



**General Assumptions**

The task force has interpreted the Act to mean that it must create a broad policy framework for the trial court personnel system, while refraining from entering into local administrative decisions, state budgetary decisions, and recommendations regarding individual employees. Although not specified in the Act, the task force operated under the following general assumptions:

- Task force actions and recommendations apply only to employees who meet the task force definition of trial court employee. It is not within the purview of the task force to submit recommendations regarding non-trial court employees.
- The survey of trial court employees should collect data about benefits because benefits are a basic tenet of any personnel structure. The Act specifies the intent that trial court employees' salaries and benefits should not be reduced as a result of the Act;<sup>13</sup> therefore, an accounting of current benefits must be completed and analyzed.
- State funding contribution levels should not significantly increase as a result of the trial court personnel structure.
- The State of California will not delegate its authority to set budgetary levels for the courts. The task force agreed that any budgetary increases must be approved through the state budget process, and such matters are not within the scope of the task force's mandate.
- It is not within the legislative mandate of the task force to make recommendations regarding items that involve specific state budgetary actions, including the number of employees needed.
- Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997. County funding obligations (County General Fund Base Amount) for trial court operations are capped at fiscal year 1994–1995 levels, reduced, or no longer required.<sup>14</sup>
- The judicial branch is independent from the personnel systems governing employees of the executive and legislative branches of state and local government. When forming recommendations for the development of a trial court employee personnel structure, task force discussions were conducted within the context of the separation of powers doctrine.
- The implementation of the trial court employee personnel system shall not reduce the retirement or other benefits, or contribution levels, of current trial court employees.
- The trial courts will operate under a decentralized system of trial court management, which ensures local authority and responsibility of trial courts to

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<sup>13</sup> *Ibid.*

<sup>14</sup> Gov. Code, §§ 77200–77201.

manage day-to-day operations.<sup>15</sup> The task force developed its policy recommendations consistent with the concept in the Act that trial courts will retain local management and operational control.

- Current personnel systems vary substantially among trial courts; these variations can continue to exist under the new system. The task force determined that a “one size fits all” structure would not be effective and instead fashioned uniform broad policies that trial courts can operate within.
- Statutory changes will be required as a result of the implementation of the trial court personnel system; federal and constitutional changes are not anticipated.

### **Timeline and Schedule**

The Act specified the time frame for the work of the task force.<sup>16</sup> Although the Act legislated that the task force members be appointed by October 1, 1997, and begin their work prior to January 1, 1998, all appointments were not completed until May 1998. The task force therefore held its first meeting in June 1998.

The task force staff requested from the President Pro Tempore of the Senate and the Speaker of the Assembly a revised schedule for the completion of the interim and final reports. This revised schedule projected that the task force would submit its final report by September 3, 1999, and that the Judicial Council would submit its classification findings and recommendations to the Legislature by January 1, 2000.<sup>17</sup>

The task force’s first interim report, issued in May 1999, reflected the work of the task force up to that date. By May 1999, however, the task force had not yet completed its draft recommendations for several components of the new personnel system. Many of those who commented on the first report stated that they would like an opportunity to comment on the *entire* set of recommendations. Therefore, the task force decided to distribute a second interim report prior to issuing its final recommendations. The decision to publish a second interim report triggered a third extension to the task force’s timeline. During the first quarter of 2000, the task force will meet as needed to review draft legislation prior to its submission to the Legislature. The timeline ultimately used by the task force is presented here.

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<sup>15</sup> Gov. Code, § 77001(a).

<sup>16</sup> Gov. Code, §§ 77604(c), (d), and 77605(a), (b).

<sup>17</sup> Gov. Code, § 77005(a). “These classifications shall include duty statements, minimum qualifications, and salary ranges.”

***Revised Timeline***

05-07-98	Task Force Appointed
06-04-98	Task Force Met and Established Operating Procedures
05-07-99	Task Force Submitted Interim Report
10-31-99	Task Force Submitted Second Interim Report
12-31-99	Task Force Submitted Final Report
01-31-00	Judicial Council Will Submit Classification Findings and Recommendations to the Legislature
01-01-00 through 03-15-00	Task Force Continues to Meet to Review Draft Legislation

## **PART II**

### **PROCESS FOR DEVELOPMENT OF RECOMMENDATIONS**

#### **Background**

As specified by the statute, the Task Force on Trial Court Employees is composed of members from across the state who represent the interests of key stakeholder groups. As indicated earlier, this diverse group includes representatives from the trial courts (judges, administrators, and labor representatives), the counties, the Department of Finance, the Department of Personnel Administration, and the Public Employees Retirement System.

Given the varying interests represented by the task force members, the group needed to establish a meeting structure that allowed all members an opportunity to voice their different perspectives. The meeting structure also needed to ensure that no one faction dominated the outcome of group decisions. Additionally, it was important that the wide range of constituents represented by task force members be kept apprised of the group's ongoing work. To this end, the task force established several channels of communication to give constituents as much information and access to the task force's work as possible.

Based on meeting discussions and consideration of input from its public constituencies, the task force developed its recommendations for a new trial court employee personnel system. Detailed descriptions of the task force's meeting and decision-making processes, methods of communicating with its public, and process used in developing its recommendations are presented here.

#### **Meeting Process and Decision Making**

To accomplish its charge, the task force held monthly meetings. As mentioned, the group required a meeting process that ensured that the various needs of the diverse representatives were taken into account. To meet these needs, the task force adopted several consensus-based governance procedures. Most notable are two key decision-making processes, described here.

#### ***Decision Making During Meetings***

As the need to reach a decision arose during a task force meeting, the group followed the process outlined here:

- First, determine whether there is consensus on the issue.
- If there is not full consensus among group members, discussion continues until the group:
  - Reaches consensus; or

- Concludes that further discussion will not produce consensus.
- The group may decide that further research is needed before members can reach a decision on that particular issue. Following further research, the new information is shared with the group, and once again there is an attempt to reach consensus.
- If, after further discussion, still no consensus can be reached, the default process is majority vote.

***Decision Making Outside of the Meetings***

Occasionally, logistics required that the task force move forward with certain decisions in between monthly meetings. To ensure that a consensus-based approach was maintained outside of the meetings, the following model was adopted by the group:

- Members are notified of a proposed decision or course of action.
- Members are then asked to respond by a specific date.
- If there are no objections or counterproposals, the decision is made or the action is taken.
- Minor changes are incorporated as appropriate, but major objections are brought to the entire group.

***Communication with the Public***

From the beginning, the members of the task force were extremely cognizant of the fact that their actions and final decisions will have an impact on many constituent groups, especially the approximately 18,000 trial court employees. To establish ongoing communication with its audience, the task force established several channels of communication, described here.

***Public Comment and Observation***

Each month, the task force held public meetings in a different location around the state to allow interested parties from a wide geographic range an opportunity to present their perspectives to the task force. At the beginning of each monthly meeting, 30 minutes were dedicated to public comment. Any interested party who wanted to address the task force could do so. If this designated time slot was not convenient, a member of the public could request an alternative time by contacting task force staff prior to the upcoming meeting. Members of the public were welcome to observe the task force's monthly public meeting.

***Court and County Visits by the Chair and Staff Project Leader***

Upon request, the chair of the task force, Justice James A. Ardaiz, and the staff project leader of the task force, Ms. Judith A. Myers, met with specific courts or groups of court employees to address questions regarding the work of the task

force. Justice Ardaiz and Ms. Myers met with numerous groups of court employees, court administrators, and presiding judges across the state. They also made presentations to the Task Force on Trial Court Facilities, the Mid-Level Court Management Conference, the California Judicial Administration Conference, and other interested groups.

***Web Site***

Since August 1998, the task force has maintained a Web site designed for public access. Upon its creation, an announcement about the Web site was sent to all court administrators, encouraging them to distribute the announcement to their employees. The task force Web site contains general background information about the task force. The Web site also includes meeting minutes and draft working documents approved by the task force. The Web site address is <http://www2.courtinfo.ca.gov/tcemployees>.

***E-Mail***

Members of the public were welcome to address questions and comments to the task force via e-mail. Task force staff distributed these questions and comments to all members of the task force. Although individual responses from the task force were not logistically feasible, the staff posted typical responses to frequently asked questions on the Web site. The e-mail address is [tcemployees@courtinfo.ca.gov](mailto:tcemployees@courtinfo.ca.gov).

**Development of Recommendations**

The Act charged the Task Force on Trial Court Employees with recommending a personnel structure for trial court employees. The task force developed sets of recommendations, referred to as models, for each component of the new trial court employee personnel structure.

In developing each model, the task force followed a similar procedure, which consisted of the following process. Before beginning work on the model, the task force established working definitions of important terms to ensure that the meaning and scope of the item was clear to all members. The task force then identified and discussed any issues relating to the topic. The task force also often received education about the specific topic. Next, the task force identified assumptions or principles underlying the topic that might guide the model development. The task force articulated its objectives or basic approaches in designing the model before creating the model.

Each model required an average of three months to complete, from definition and issue identification to final adoption of the model. Once each model was adopted, it was posted on the Web site. The task force then tested the models against the various definitions of working status options (state, county, and court) to identify

any issues that needed further examination and to consider the impact of the models under each employment status option.

**Process Conclusions**

The processes used by the task force in its meeting structure, decision making, communication with the public, and model development represent a significant investment of time and effort by the task force. While time consuming, these methods enabled the task force to reach its objectives in a manner that met the concerns of its diverse constituency. Over the course of close to 20 meetings and many decisions, the task force consistently managed to reach consensus on almost all issues. In fact, all of the task force's final trial court employee personnel system recommendations were unanimously adopted without dissent.

## **PART III**

### **DEFINITION OF TRIAL COURT EMPLOYEE**

#### **Background**

Early in the process, the Task Force on Trial Court Employees determined that it would need to develop a definition of a trial court employee to clarify to whom the new personnel system recommended by the task force would apply. Specifically, the task force needed to determine:

- Who are the employees of the trial court who will be included in the classification, benefit, and salary systems established by the Legislature?
- When a decision is made regarding the status of trial court employees, who will that decision affect?

The task force also recognized that a definition would be necessary both to assist the courts and counties in identifying who should be included in the survey of trial court employees and to identify who should participate in an advisory vote of trial court employees.

The task force first received education on the legal definitions of an employment relationship and the control tests used by various agencies to differentiate between employees and independent contractors.

The task force decided that it should not identify court employees by the function performed because a function performed in one court by a court employee might, in another court, be performed by a county employee and, in another, by an independent contractor. The task force does not intend to change the status of any individual performing a function or service for the court. Only those employees who meet the definition of a trial court employee will be covered by the new personnel system. The definition of a trial court employee adopted by the task force focuses on individuals who meet two specific tests of an employment relationship: (1) those individuals who are included in the court's budget, and (2) those individuals whose manner and means of work are within the control of the court.

#### **Survey Definition of Trial Court Employee**

The task force initially developed a definition of a trial court employee for the purposes of the survey to be conducted of all trial court employees. The definition was needed to inform the courts and counties completing the survey about whom they should provide data. The task force decided to be more inclusive than might ultimately be necessary to ensure that the survey collected the necessary data without the need to return to seek more information from the courts and counties. The definition used for the purposes of the survey is presented here.



**Survey Definition of Trial Court Employee****Definition:**

If questions (A) and (B) are both answered yes, the individual is a court employee for the purposes of this survey. If either question (A) or (B) is answered no, the individual is not a court employee for the purposes of this survey.

- A. Is the individual paid from the court's budget,<sup>18</sup> regardless of funding source?
- B. Does the court<sup>19</sup> have the right to control the manner and means of the individual's work?

For purposes of this survey, the court's right to control the manner and means of the individual's work means that the court has the authority to hire, supervise,<sup>20</sup> discipline,<sup>21</sup> and terminate the individual. The court's authority to hire, supervise, discipline, and terminate the individual need not be exclusive and may be shared with other entities, including county personnel offices and agencies with statutory or licensing authority.

This definition excludes (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a Form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

This definition includes subordinate judicial officers (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639).

<sup>18</sup> For purposes of this survey, *court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. Funds include local revenue, all grants, and trial court operations funds (Trial Court Funding Act, AB 233, Gov. Code, § 77009(b)).

<sup>19</sup> For purposes of this survey, *court* includes judges in their individual or collective capacity, or their appointees, who are vested with the authority to hire, supervise, discipline, and terminate.

<sup>20</sup> For purposes of this survey, *supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.

<sup>21</sup> For purposes of this survey, *discipline* is defined as a procedure such as reprimand, demotion, suspension, or reduction in pay that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

If the preceding definition excluded the following functions or groups, the survey collected available information from the court administrator on titles, duties, rate of pay, qualifications, and group insurance benefits:

- Court security officers (the survey also collected retirement information on this group);
- Court interpreters;
- Court reporters; and
- Electronic recording monitors.

**Development of Final Definition of Trial Court Employee**

The preliminary definition was developed for use only in the survey. The survey requested data on individuals performing certain functions for the court to provide the task force with as much information as possible about traditional court functions such as court reporting and court security. However, some of the individuals included in the survey did not meet the control test that defines an employment relationship because they are independent contractors or employees of another entity. Therefore, the task force reviewed and narrowed the definition of trial court employees to include only those individuals who are truly employees of the court and not independent contractors or employees of another entity. Only individuals who meet the definition of a trial court employee will participate in any advisory vote that may be taken in the future (see Part VIII). The new personnel system adopted by the Legislature will apply only to employees described by this definition. The final definition of a trial court employee is presented here.

<b>Final Definition of Trial Court Employee</b>
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**Definition:**

An individual is a trial court employee if:

- A. The individual is paid from the court's budget, regardless of the funding source; and
- B. The court has the right to control the manner and means of the individual's work, which means that the court has the authority to hire, supervise, discipline, and terminate the individual.<sup>22</sup>

If both (A) and (B) are true, the individual is a trial court employee regardless of classification or whether or not the function performed is identified in rule 810 of the California Rules of Court. If either statement (A) or (B) is not true, the individual is not a trial court employee.

**Specific Inclusions and Exclusions:**

This definition includes those subordinate judicial officers, that is, commissioners and referees, who meet this definition.

This definition excludes (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a Form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

**Definitions of Terms:**

- *Court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. These funds include local revenues, all grants, and trial court operations funds (Lockyer-Isenberg Trial Court Funding Act of 1997, Government Code section 77009(b)).
- *Court* is defined as judges, or their appointees, who are vested with or delegated the authority to hire, supervise, discipline, and terminate.
- *Supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.
- *Discipline* is defined as a procedure such as a reprimand, demotion, suspension, reduction in pay, or termination that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

<sup>22</sup> The court's process and procedure for hiring, supervising, disciplining, and terminating the individual may have involved other entities, including county personnel offices and agencies with statutory or licensing authority.

**Considerations: Final Definition of Trial Court Employee**

Since the task force is defining court employees not based on function performed but by employment relationship, there are classes of individuals who perform services for the court who may or may not be court employees under this definition. For example, in some courts, court reporters or court interpreters may be court employees; in others, they may be independent contractors. The task force recognizes that employment relationships may change, and that functions currently performed by independent contractors may be performed by employees in the future. The task force is neither recommending nor precluding future changes in employment relationships.

## PART IV

### DEFINITIONS OF EMPLOYMENT STATUS OPTIONS: STATE, COUNTY, COURT, AND OTHER

#### Background

The Act specified that the duties of the Task Force on Trial Court Employees include the examination and outlining of issues relating to the establishment of a local personnel structure for trial court employees under:

- Court employment;
- County employment, with the concurrence of the county and the courts in the county;
- State employment, with the concurrence of the state and the courts in the county; or
- Other options identified by the task force.<sup>23</sup>

The Act did not define these status options. For example, it did not define whether court employment meant a single trial court employer or 58 independent trial court employers. It did not define whether state employment meant state judicial branch employment or some other form of state employment, such as employment in the executive branch, the California State University system, or the University of California system.

Since the legislation specified that the task force could consider state, county, and court status options, the task force concluded that these status options should be defined and should be clearly different from each other.

#### Employment Status Definitions

The task force developed working definitions of the state, county, and court employment status options to use in designing personnel system models that would apply under each status option. These employment status definitions describe the employment status, hire and fire authority, and meet and confer processes, as well as the final authority for determination of economic and noneconomic benefits under the state, county, and court employment options. Under each employment status definition, the term *state-supported* means financially supported by the state. The task force also used these definitions to identify and consider issues under each employment status option in making its final recommendations to the Legislature.

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<sup>23</sup> Gov. Code, § 77603(g).

State employment was defined by the task force as state judicial branch employment as opposed to some other type of state employment, since the trial courts are part of the judicial branch of government and subject to the California Rules of Court adopted by the Judicial Council. This employment status definition is not part of the existing state judicial branch but rather describes a separate state trial court system, with independent local management and local labor relations.

County employment was defined as employment in a state-supported county personnel structure in which employees are part of the county personnel system. This employment status may have existed in some courts prior to the passage of the Act, with the exception of the change to state responsibility for the financing of court operations. The county employment status option does not necessarily include all elements of what is normally considered county employment status. This is because such a county model would conflict with the Trial Court Funding Act's emphasis on local court financial control and local court management as well as trial court labor relations laws and rules.

Court employment was defined as employment in an independent court structure separate from the state and the county. This employment status definition results in an independent court that is responsible for developing its own personnel policies and procedures but that has the option to establish policy, salary, and benefit structures comparable to its county's system, subject to meet and confer, where applicable.

The task force did not identify an "other" status option.

The task force developed a matrix to display its working definition of each employment status option. (See Exhibit IV-1, which follows.)

After examining and outlining issues relating to the establishment of a local personnel structure for trial court employees under each of these employment status options, the task force concluded that the court employment status option was the most appropriate employment status option and best met the criteria set forth in the Trial Court Funding Act of 1997. Therefore, it is recommending establishment of a trial court employment status and governance structure that is described in detail in Part V of this report.

### Exhibit IV-1: Working Employment Status Definitions

The charge of the task force as outlined in Assembly Bill 233, article 1, section 77603(g), is to examine and outline issues relating to the establishment of a local personnel structure for trial court employees under:

- (1) Court employment;
- (2) County employment, with the concurrence of the county and the courts in the county;
- (3) State employment, with the concurrence of the state and the courts in the county; or
- (4) Other options identified by the task force.

	State	Court	County
	A state-supported court personnel structure with local trial court administration	A state-supported trial court personnel structure with local trial court administration (baseline)	A state-supported county personnel structure with local trial court administration
<b>Employment Status</b>	Employees working for the trial court are state judicial branch employees.	Employees working for the trial court are trial court employees.	Employees working for the trial court are county employees.
<b>Hire/Fire Authority</b>	The courts have hire/fire authority, subject to statewide judicial branch and local trial court personnel rules and memoranda of understanding, as applicable.	The courts have hire/fire authority, subject to local trial court personnel rules and memoranda of understanding, as applicable.	The courts have hire/fire authority, subject to county and local trial court personnel rules and memoranda of understanding, as applicable.
<b>Meet and Confer</b>	Employees negotiate with the local trial court administration with the involvement of the state judicial branch (the state determines the state funding level).	Employees negotiate with the local trial court administration (the state determines the state funding level).	Employees negotiate with the county and local trial court administration (the state determines the state funding level).
<b>Final Authority for Determination of Economic/Noneconomic Benefits</b>	The court, with the involvement of the state judicial branch, determines the economic and noneconomic benefits.	The court determines the economic and noneconomic benefits.	The board of supervisors and the court jointly determine the economic and noneconomic benefits.

## **PART V**

### **EMPLOYMENT STATUS AND GOVERNANCE MODEL**

#### **Background**

The Trial Court Funding Act of 1997 charged the Task Force on Trial Court Employees with recommending an appropriate system of employment and governance for trial court employees. The task force was asked to examine and outline issues relating to the establishment of a local personnel structure for trial court employees under three status options (court, county, and state) and any other status option identified by the task force. The legislation required the task force, in recommending options for employee status, to consider the complexity of interests of employees and various governmental entities and, to the greatest extent possible, recognize the need for achieving the concurrence of the affected parties. The legislation specified that consideration must be given to contractual obligations, minimizing disruption of the trial court workforce, and protecting the rights accrued by employees under their current systems as well as ensuring that court employee salary and benefits are not reduced as a result of implementation of the new personnel system. The legislation acknowledged the authority and responsibility of the trial courts to manage local personnel systems. The Legislature also declared its intent to enact a personnel system for trial court employees that recognizes the state assumption of trial court costs, has uniform statewide applicability, and promotes organizational and operational flexibility.

#### **Assumptions and Objectives: Status and Governance**

The task force developed assumptions and objectives as follows:

##### ***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes in current federal law.
3. The State will assume trial court costs.
4. Trial courts have local authority and responsibility to manage their local personnel systems.
5. A personnel system will be recommended that shall have uniform statewide applicability and promote organizational and operational flexibility.
6. The task force duties include examining and outlining issues relating to the establishment of a local personnel structure for trial court employees under the employment status options of court, county, and state, or other options identified by the task force, and recommending a personnel structure for trial court employees.



***Objectives:***

- A. The employment status will effectively support the implementation of the trial court employee personnel system recommended by the task force.
- B. The employment status will:
  - Recognize state assumption of trial court costs;
  - Ensure that employee salary and benefits are not reduced;
  - Recognize local authority and responsibility of trial courts to manage local personnel systems;
  - Consider the complexity of interests of employees and governmental entities;
  - Recognize the need for achieving concurrence of the affected parties;
  - Give consideration to contractual obligations, minimizing disruption of the trial court workforce, and protecting the rights accrued by employees under their current systems; and
  - Have uniform statewide applicability and promote organizational and operational flexibility.

<b>Recommended Court Employment Status and Governance Model</b>
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Upon implementation of the trial court employee personnel system:

- I. The governance structure shall ensure local governance by the trial courts over personnel and budget matters. The court's budget shall not be subject to county approval.
- II. Trial court employees shall be court employees and have court employment status except for certain benefits where they are specified and designated as county employees.
- III. Employees shall be entitled to certain benefits that the county provides to its employees. These entitlements shall be set forth in statutes that will incorporate the task force's final recommendations.
- IV. The court has authority over personnel issues subject to meet and confer as applicable and shall not be subject to county personnel rules. Representatives of recognized employee organizations shall meet and confer with representatives of court administration over matters within the scope of representation.
- V. The models recommended by the task force shall become the sole trial court employee personnel system. This trial court employee personnel system shall replace any aspects of county personnel systems, including county employment, selection, advancement, and employment protection systems applying to trial court employees prior to the implementation date except as specified in the task force models.

**Considerations: Trial Court Employment Status and Governance**

In proceeding with its charge to recommend a new personnel system and an employment status for trial court employees, the task force identified the components of a personnel system and developed models that describe these components under each of the specific employment status options specified in the legislation (court, county, and state). In developing the models, the task force set forth assumptions with respect to each model, established the objectives it sought to accomplish, and designed models to accomplish those objectives under each of the three specified status options consistent with the assumptions. (For a detailed explanation of the development of the assumptions, objectives, and models, refer to Part VII.)

After completing all of the models, the task force proceeded to determine which employment status would best accomplish the objectives it had established and accommodate all of the models. The task force also considered which status best met the objectives of the statute. Therefore, the task force reviewed all of the models as they would apply under each employment status and discussed which status best accommodated the following considerations:

- State assumption of trial court costs;
- Local court governance and control;
- Employment protection concerns;
- The needs of large, medium, and small courts and their employees;
- Achieving concurrence of the affected parties;
- Minimizing disruption of the trial court workforce;
- The rights accrued by employees under their current systems;
- The complexity of interests of employees and governmental entities;
- Current contractual obligations; and
- The need to ensure no reduction in employee salary and benefits.

The application of the models to the employment status options resulted in the following observations that affected the employment status recommendation of the task force:

- *Salary:*  
The state and court options provide more local court management through the court's independent ability to establish salaries separately from the county.
- *Classification:*  
The state and court options provide more local court management through the court's approval of its classification plan separately from the county.

- *Meet and Confer:*  
Employees negotiate with the local court under all status options, but the state or the county would be involved under the state and county options, respectively.
- *Employment Protection:*  
All options provide employment protection, but the state and court options allow development of an employment protection system that applies to all courts; the county option would maintain different employment protection systems in each county and between county employees in general and those who work for the court.
- *Benefits:*  
The state and court options provide more local court management through the court's independent ability to determine benefit levels.
- *Federally Regulated Benefits:*  
The state and court options provide more opportunity for independent court flexibility than any existing county system, but would require transition from existing county systems.
- *Deferred Compensation:*  
The state option provides both 401(k) and 457 plan opportunities to all court employees; the court status option provides opportunities to offer deferred compensation plans to court employees who do not currently have them; under the state and court options, the state or court would be probable successor employers to the county in order to maintain current county plans; and the county option maintains the status quo regarding the availability of deferred compensation plans.
- *Defined-Benefit Retirement:*  
The state option requires all court employees to pay social security but also provides the opportunity to enhance retirement benefits. According to legal advice, the court option maintains individual county social security arrangements and the county option maintains the status quo regarding social security payment status.
- *Governance:*  
The state and court options allow the court to control budgeting and personnel decisions; the county option allows the county to control budgeting and personnel decisions affecting the court.

Of particular concern under the state status option was the requirement that all court employees must contribute to social security, including those who do not currently contribute. This issue was seen as a reduction in some employees' salary and benefits. State employment also had the potential for affecting local employee representation and negotiations. Of particular concern under the county status option was its incompatibility with the local court management mandated by the

Trial Court Funding Act of 1997. Further, it did not conform to the legislative intent that the recommended employment status recognize the state assumption of trial court costs. In addition, county employment status would not recognize the interests of the counties that have no interest in continued administrative responsibility for trial courts that are being funded by the state.

After reviewing these considerations, the task force decided that, under the models developed, the court status option was the most appropriate status option and best met the objectives of the task force as well as the objectives set forth in statute. The court status option: recognizes that the counties were no longer assuming trial court costs; provides more local court governance and control; offers more opportunities for employment protection; addresses the needs of large, medium, and small courts and their employees; has the potential to achieve concurrence from affected parties; requires some transition, but minimizes disruption of the trial court workforce; offers opportunities to protect rights accrued by employees under their existing systems; considers the interests of employees and governmental entities; considers existing contractual obligations; and requires no reduction in employee salary and benefits.

The recommended court employment, status and governance model adopted by the task force reflects the court employment status. It clarifies that the courts will have local governance over personnel and budget matters and that no court's budget will be subject to county approval. The model specifies that trial court employees will be court employees, not county or state employees, except where they are specified and designated as county employees for the maintenance of certain benefits in the models and in statutes that incorporate the recommendations of the task force. The model also ensures that personnel matters, including the meet and confer process, are entirely within the authority of the court and not the county.

The task force recommends that the models proposed by the task force in its final report serve as the sole trial court employee personnel system. This recommended trial court employee personnel system replaces any aspects of county personnel systems, including county employment, selection, advancement, and employment protection systems, applying to trial court employees prior to the implementation date of the new personnel system except as specified in the task force models.

**Impact: Trial Court Employment Status and Governance**

The trial court employment status and governance model establishes a uniform employment system and status for all trial court employees. This status also establishes an employment, selection, advancement, and employment protection system, as described in the employment, selection, and advancement system model and the employment protection system model, equivalent to levels of protection

currently provided to some court employees and improves the level of protection of many court employees. The court status ensures local management and control in each of the trial courts over personnel matters, including classification, salary, and benefits. It also ensures that court employee salaries and benefits are not reduced as a result of implementation of the new personnel system.

Implementation of the trial court employment status and governance model requires trial courts to develop and administer their own personnel systems, subject to meet and confer, on matters within the scope of representation, as applicable. However, the courts have options to seek assistance from vendors or the counties and may consider pooling resources on a regional or statewide basis.

In summary, this recommendation and all of the models presented in this report meet the objectives of the task force as well as the criteria for the new trial court employment status and personnel structure set forth in the Trial Court Funding Act of 1997.

## PART VI

### COMPONENTS OF A PERSONNEL SYSTEM: THE RECOMMENDED MODELS

#### General Background of Recommended Models

The Act charged the Task Force on Trial Court Employees with recommending a personnel structure for trial court employees. However, it did not define the term *personnel structure* (also referred to as a personnel system), leaving the task force to determine what might be included within that term.

In defining what the Legislature intended by the term *personnel structure*, the task force considered the duties assigned to it by the Act. The Act specifies that the task force is to survey and document seven components of a personnel structure: court employment status, classification, salary, retirement systems, benefits, terms and conditions of employment, and labor relations.<sup>24</sup> The task force developed a set of recommendations for each of these personnel system components. Each set of recommendations is referred to as a model. In some cases, the task force broke these components into subcomponents, particularly for complex topics. For example, the task force divided retirement systems into defined-benefit retirement, deferred compensation plan benefits, and retiree group insurance benefits.

The court employment status and the final models listed here were unanimously adopted and recommended by the task force. Together with the employment status and governance model, these models combine to form the entire trial court employee personnel system.

- A. Classification and salary;
- B. Meet and confer;
- C. Employment protection system;
- D. Employment, selection, and advancement system;
- E. Personnel file access;
- F. Defined-benefit retirement plan;
- G. Accrued leave benefits;
- H. Benefits: group insurance and other employer-provided benefits;
- I. Retiree group insurance benefits;
- J. Federally regulated benefits;
- K. Deferred compensation plan benefits; and
- L. Transition.

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<sup>24</sup> Gov. Code, § 77603.

All models apply to both represented and unrepresented employees, unless specified otherwise. If a model uses the phrase, “meet and confer, as applicable,” this means the court has the obligation to meet and confer with representatives of recognized employee organizations on matters within the scope of representation. The court does not have the obligation to meet and confer with unrepresented employees.

The task force’s recommendations for each personnel component is contained in this part of the final report to provide an overview of the trial court employee personnel system. However, given the complexity of these recommendations, a detailed description of the development and impact of each personnel component is contained in Part VII of this report, “Development and Explanation of the Trial Court Employee Personnel Structure.”



<b>Recommended Classification Model</b>
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The task force recommends that the Judicial Council:

- I. Create a uniform statewide trial court classification system (uniform classification system) of broad classifications that covers all jobs performed in courts, using the *Trial Court Model Classification Manual* as a starting point and avoiding “other” as a classification.
- II. Establish the uniform classification system as a common classification language for all trial courts to use that allows each court to:
  - A. Continue to use its own existing classification titles;
  - B. Determine the appropriate classification for each local court position within the uniform classification system; and
  - C. Establish new local classification titles.
- III. Require that the assignment of a position to a uniform classification by the court be based on duties performed.
- IV. Provide descriptions of:
  - A. Overall general principles and guidelines for establishing minimum qualifications for all classifications by individual courts; and
  - B. Commonly recognized minimum qualifications for individual broad classifications.
- V. Establish a process for maintaining, periodically reviewing, updating, and creating additional broad classifications within the uniform classification system to reflect changes in local court classification plans.

<b>Recommended Salary Model</b>
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The task force recommends that the Judicial Council:

- I. Establish a salary system that allows individual trial courts to establish their own salary ranges based on the local market and other local compensation-related issues, such as difficulty of recruitment or retention.
- II. Document existing local salary ranges contained in each uniform classification to create a broad salary register for each uniform statewide trial court classification. The minimum and maximum of the salary register for each uniform classification will be the minimum of the lowest local salary range and the maximum of the highest local salary range. The salary register for each uniform classification reflects actual salaries and does not set them.
- III. Document the local salary ranges that exist at the time of transition to the new trial court personnel system; future local salary range adjustments are subject to local personnel policies, procedures, and plans, or meet and confer, where applicable.
- IV. Establish a process for maintaining, reviewing, and updating the broad salary registers to reflect changes in local salary ranges.

**Recommended Meet and Confer<sup>25</sup> Model**

- I. The existing labor relations statutes regarding court employees (Government Code sections 68650 through 68655) remain in place except for changes related to the enforcement of the existing Court Employee Labor Relations Rules of Court.
- II. The Court Employee Labor Relations Rules of Court shall be codified; Meyers Milias Brown Act (MMBA) section references in the codification shall be replaced with specific language from the particular section of the MMBA referenced as the MMBA read on April 23, 1997, and any references to the MMBA itself shall be deleted.
- III. Trial courts and court employees will not be covered by the MMBA or any subsequent changes to the MMBA.
- IV. The meet and confer process for each court will be conducted on a local level.
- V. This meet and confer model does not apply to unrepresented employees.
- VI. The court's representatives and representatives of recognized employee organizations shall meet and confer and be authorized to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals. Nothing in this model is intended to preclude joint county and court negotiations with recognized employee organizations, subject to mutual agreement between the court and the county.
- VII. Unless otherwise agreed, the court and representatives of recognized employee organizations shall negotiate a single agreement for each bargaining unit.

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<sup>25</sup> As used in this model and other assumptions, objectives, and models of the task force, the term *meet and confer* is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3) states, "Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent."

- VIII. The Labor Relations Statute, Government Code sections 68650 through 68655, will be amended to provide that:
- A. Each trial court shall adopt a procedure, such as mediation, arbitration, or a proceeding before an administrative tribunal such as that used for review of the decision of the hearing officer in evidentiary due process hearings as described in the employment protection system model, subject to meet and confer as applicable, as a preliminary step to be taken before petitioning the Court of Appeal for relief pursuant to Government Code section 68654. In those courts with 10 or more judges, in the event that the parties reach impasse regarding this procedure, the court may select only nonbinding arbitration or a proceeding before the administrative tribunal used for review of the decision of the hearing officer in evidentiary due process hearings. A complete alternative to petitioning the Court of Appeal for relief pursuant to Government Code section 68654 may be provided for by mutual agreement between the court and representatives of recognized employee organizations;
  - B. If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a reference to make findings of facts, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
  - C. The Judicial Council shall adopt a Rule of Court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.
- IX. The codified Court Employee Labor Relations Rules will be amended to provide that a 30 percent showing of interest by means of a petition triggers an election and 50 percent plus one of those voting secures an agency shop arrangement only if the legislature passes and the Governor signs such legislation modifying the MMBA, as long as the codified Court Employee Labor Relations Rules are further modified to include a provision that, with respect to any particular court, the amendment will be effective only if the court and representatives of the recognized employee organizations, through the meet and confer process, establish a provision that the employee organization shall hold harmless the court and defend and indemnify the court regarding the application of any agency shop requirements or provisions, including but not limited to, improper deduction of fees, maintenance of records, and improper reporting. To avoid unconstitutionally impairing contracts, this amendment shall go into effect if the above-referenced conditions are satisfied on the latest of the following: (1) the effective date of the legislation that enacts a personnel

system for trial court employees; (2) 90 days from the date that such legislation is chaptered; or (3) in the event that a memorandum of understanding between the court and an employee organization is in effect on the later of either of the dates referenced in (1) or (2), or if the MMBA and the codified Court Employee Labor Relations Rules are modified as specified above after the 2000–2001 legislative session, as to such employees covered by such memorandum of understanding, the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding. The court and representatives of recognized employee organizations may mutually agree to a different effective date.

**Recommended Employment Protection System Model**

- I. An employment protection system is legally available to the extent it is not excluded by the Constitution. To the extent that the particular employment protection system proposed by the task force is precluded by existing statutes, statutory amendments are required and shall be proposed to ensure that the trial court employment protection system becomes the minimum employment protection system for all trial courts.
- II. The trial court employment protection system shall become the minimum employment protection system for all trial court employees as of the implementation date and shall become part of the sole trial court employee personnel system. This trial court employment protection system shall replace county employment protection systems applying to trial court employees prior to the implementation date except as specified herein.
- III. Each local system shall include, but not be limited to, the following elements:
  - A. Employees may be laid off based on the organizational necessity<sup>26</sup> of the court. The local trial court shall develop personnel rules regarding procedures for layoffs. The development of these rules shall be subject to meet and confer, as applicable.
  - B. Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.<sup>27</sup>
  - C. The employee protection system shall include progressive discipline, as defined by local trial court personnel policies, procedures or plans, subject to meet and confer, as applicable.
  - D. *Employees*, as used in item III of this model, means all employees other than:
    1. Subordinate judicial officers (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639); and
    2. Managerial, confidential, temporary, limited term, and probationary<sup>28</sup> employees who may be excluded from this employment protection system in accordance with local trial

<sup>26</sup> A layoff for organizational necessity means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

<sup>27</sup> A generally accepted definition for *cause* is “A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.” (*Pugh v. Sees Candies*, 116 Cal. App. 3d 311, 330 (1981).)

<sup>28</sup> Probationary employees sometimes are referred to as introductory employees.

court personnel policies, procedures, or plans, subject to meet and confer, as applicable.

- E. This employment protection system shall not alter the fact that court employment is authorized and established by statute, and the termination of such employment shall not be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract, either implied or express.
- F. Unless modified through meet and confer or local trial court personnel policies, procedures, or plans, the procedure for any employee seeking a remedy who believes that the employing court has not complied with this employment protection system or who challenges the disciplinary decision shall be to first exhaust available administrative remedies provided by the employing court. In providing such administrative remedies, the employing court shall establish a lawful due process procedure to review disciplinary decisions that by law require a due process procedure. The lawful due process procedure shall be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.<sup>29</sup> Any impartial hearing officer required by the lawful due process procedure in an evidentiary due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable.<sup>30</sup> At a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court.

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<sup>29</sup> Under the state and federal Constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements. (See *Board of Regents v. Roth* (1972) 408 U.S. 564, 576–77; Cal. Const., art. I, § 7.) In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that at a minimum, if an employer intends to remove an employee prior to providing an evidentiary due process hearing, preremoval safeguards must include: (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials on which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. The employee is entitled to an evidentiary due process hearing, which can be given before or after the discipline or discharge is imposed. (See *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545–47.) In general, the following elements are typical in an evidentiary due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer/decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that reference the evidence.

<sup>30</sup> Options for selection that the parties may consider include, but are not limited to, a mutual strike-out system or a mutual selection system. Consideration shall be given to using an outside organization such as the American Arbitration Association or the State Mediation and Conciliation Service for submission of names of potential impartial hearing officers.

- G. The evidentiary due process hearing required by the lawful due process procedure<sup>31</sup> shall take place under state and federal standards and shall include at a minimum the following elements:
1. The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.
  2. The employee and employer shall have the right to call witnesses and present favorable evidence. The employer shall be required to release employees to testify at the hearing.
  3. The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in California Code of Civil Procedure section 1282.6.
  4. The employee has the right to representation, including legal counsel, if provided by the employee.
  5. If the hearing officer disagrees with the court's disciplinary decision, the local trial court shall furnish a copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a union or counsel, to the employee's bargaining representative or counsel, without cost.
- H. The standard of review by the trial court of the hearing officer's report and recommendation shall be as follows:
1. The court shall be bound by the factual findings of the hearing officer except factual findings that are not supported by substantial evidence.
  2. With respect to the acceptance or rejection of the hearing officer's report and recommendation, the court shall give substantial deference to the recommended disposition of the hearing officer and may not reject or modify the recommendation except pursuant to a written statement specifying the reason or reasons why the recommended disposition is rejected. Such statement of reasons shall have direct reference to the facts found and shall specify whether they are supported by substantial evidence. The court may reject the recommendation of the hearing officer if the material factual findings are not supported by substantial evidence or for the following reasons or reasons of

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<sup>31</sup> The evidentiary due process hearing required by a lawful due process procedure is sometimes referred to as a post deprivation due process hearing and may be given before or after the discipline or discharge is imposed.



substantially similar gravity or significance: (1) the recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view; (2) the recommendation requires an act contrary to law; (3) the recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view; (4) the recommendation disagrees with the court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement; (5) the recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider and/or distinguish; or (6) the recommendation, from an objective point of view and applied by the court in a good faith manner, exposes the court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

- I. The trial court's process of review of the hearing officer's report and recommendation shall be as follows: Subject to meet and confer, as applicable, trial courts shall establish in local personnel rules a process for the trial court to review the hearing officer's report and recommendation that provides at a minimum that the decision of the hearing officer shall be subject to review as described in item III.H above, save and except that such review that results in rejection or substantial modification of the recommendation of the hearing officer shall be conducted by an individual other than the disciplining officer. If such disciplining officer is a judge of the court, it shall be made by another judge of the court, a judicial committee, an individual, or a panel as specified in local personnel rules.
  1. In a court with two or fewer judges, if the court or the county has no other judge than the disciplining judge or judges, such judge or judges may conduct the review.
  2. As a minimum requirement, in those courts with ten or more judges, the review shall be by a panel of three judges whose decision shall be by a majority vote. One judge shall be selected by the presiding judge or his or her designee. One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative. The two appointed judges shall select the third judge. No judge may be selected to serve without his or her consent. The term of office of the panel shall be defined by local personnel

policies, procedures, or plans, subject to meet and confer, as applicable. No judge shall serve on the panel in a case in which he or she has imposed discipline.

- J. The time for the trial court to review the hearing officer's report and recommendation shall be as follows: The trial court shall have 30 calendar days from receipt of the decision of the hearing officer or from receipt of the record of the hearing, whichever is later, to accept or reject the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different time frame.
- K. The denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate.
- L. If the disciplined employee challenges the decision of the disciplining court rejecting or modifying the hearing officer's recommendation, the employee may file a writ of administrative mandamus under Code of Civil Procedure section 1094.5 in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure, and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the bargaining representative without charge. In reviewing the disciplining court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.
- M. In a county of the first class as defined in Government Code section 28022 as of January 1, 2000, to the extent that a court employee was a member of a county civil service system at the time of implementation of a personnel system for trial court employees, that employee will have the right to elect, as an alternative to the above described evidentiary due process hearing, to have an evidentiary due process hearing before the county civil service commission. The election to remain in the county civil service system for this purpose only shall be made not later than one year after the implementation date. Failure to elect to remain in the county civil service system for this purpose only shall result in the employee automatically being subject to the trial court employment protection system for all purposes. A court employee may not make this election after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all

remedies related to that action. The election to be subject to the trial court employment protection system may not be reversed. Court employees who initially elect to remain in the county civil service system for this purpose may elect at any time to be subject to the trial court employment protection system except after receiving notice of intended discipline as described above. Court employees who initially elect to remain in the county civil service system for this purpose who later promote or transfer into a position that is comparable to a position that is classified as exempt from the county civil service system shall be subject to the trial court employment protection system for all purposes. Court employees in the county of the first class eligible for this option shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission as described herein.

- IV. Nothing herein shall preclude the provision of enhanced employment protection systems through meet and confer or local trial court personnel policies, procedures, or plans.
- V. The implementation date on which the system in each court shall go into effect is the latest date of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of this model are governed by an existing memorandum of understanding covering court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

**Recommended Employment, Selection, and Advancement System Model**

- I. Hiring and promotion within the trial courts shall be done in a nondiscriminatory manner based on job-related factors.
- II. Trial courts shall develop personnel rules regarding hiring, promotion, transfer, and the impact of reclassification, subject to meet and confer, as applicable, on those rules that cover matters within the scope of representation.<sup>32</sup>
- III. Trial courts shall develop personnel rules and procedures that meet the following minimum standards:
  - A. Recruiting, selecting, transferring, and advancing employees shall be on the basis of their relative ability, knowledge, and skills. Initial appointment shall be through an open, competitive process. Preference shall be given to internal candidates.
  - B. Formal job-related selection processes are required when filling positions.
  - C. Each court shall have an equal employment opportunity policy applying to all applicants and employees in accordance with applicable state and federal law.
  - D. The following positions are excluded from required competitive selection and promotion processes:
    1. Subordinate judicial officers (such as pro tem judges, commissioners, and referees).
    2. Managerial, confidential, temporary, and limited-term positions in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. Where managerial, confidential, temporary, and limited-term positions are currently defined for this purpose within the local trial court, that definition shall be maintained for purposes of establishing what is managerial, confidential, temporary, and limited term in the new personnel system subject to changes in personnel policies, procedures, or plans, subject to meet and confer, as applicable. In courts where managerial, confidential, temporary, and limited-term positions have not previously been defined for this purpose, any such designation shall be subject to meet and confer, as applicable. Permanent or regular employees who assume

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<sup>32</sup> This model is not intended to expand the Court Employee Labor Relations Rules definition of those matters within the scope of representation.

limited-term appointments or assignments to other positions or classes shall retain their permanent or regular status. The exclusion of managerial, confidential, temporary, and limited-term positions from required competitive selection and promotion processes shall not affect the right of employees in those positions to representation.

- IV. The alleged misapplication, misinterpretation, or violation of the rules governing hiring, promotion, transfer, and the impact of reclassification as set forth in this model are subject to binding arbitration.
- V. The implementation date on which the system in each court shall go into effect is the latest date of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. The employer and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of this model are governed by an existing memorandum of understanding covering court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.
- VI. The trial court employment, selection, and advancement system described in this model shall become the employment, selection, and advancement system for all trial court employees as of the implementation date and shall become part of the sole trial court employee personnel system. This trial court employment, selection, and advancement system shall replace any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date.

<b>Recommended Personnel File Access Model</b>
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The trial courts shall adopt personnel rules, subject to meet and confer, as applicable, to provide trial court employees with access to their official personnel files. The rules shall provide at a minimum that:

- I. Trial courts shall at reasonable times and at reasonable intervals, upon the request of an employee, permit the employee to inspect his or her personnel files that are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary actions.
- II. Trial courts shall keep a copy of each employee's official personnel file at the place where the employee reports to work, or shall make the official personnel file available at such place within a reasonable period of time after a request therefore by the employee.
- III. Records of an employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory, or common law provisions shall be excluded from inspection.

<b>Recommended Defined-Benefit Retirement Plan Model</b>
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- I. Trial court employees will be eligible to participate in county defined-benefit retirement systems<sup>33</sup> and will be subject to county defined-benefit retirement system regulations and policies. Trial court employees will have the right to continue to receive the same retirement plan benefits as county employees without the opportunity to meet and confer with the counties as to those benefits.
- II. For trial court employees who are members of a county retirement system, the same rate of contribution shall be paid by the court to the county retirement system for each employee as the rate of contribution required of the county under the county retirement system.
- III. To the extent permitted by law, social security contributions or noncontributions of trial court employees will not be modified by implementation of the trial court personnel system.
- IV. To facilitate court employee participation in county defined-benefit retirement plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- V. The model does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan.

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<sup>33</sup> *County retirement systems* in this model means 1937 Act, CalPERS, or independent retirement systems or plans.

<b>Recommended Accrued Leave Benefits Model</b>
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Upon implementation of the trial court employee personnel system:

- I. The type and rate of accrued leave benefits will not be reduced as a result of the implementation of the trial court employee personnel system. Policies related to accrued leave in effect on the date of implementation remain in effect until modified pursuant to item IV.
- II. The implementation of the trial court employee personnel system will not be considered to cause a termination and rehire of employment for purposes of accrued leave. Employees will retain their accrued leave balances upon implementation of the trial court employee personnel system. Employees may not cash out their accrued leave balances solely as a result of implementation of the trial court employee personnel system.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same type and accrual rate of, as well as policies relating to, accrued leave benefits as provided in the memoranda of understanding.
- IV. The type and accrual rate of, as well as policies relating to, accrued leave benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or revision of existing personnel policies, procedures, or plans.
- V. The implementation of the trial court employee personnel system will not force either the court or the county to cash out trial court employees' accrued leave balances.



<b>Recommended Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect or for a period of 24 months, whichever is longer, represented trial court employees shall continue to receive the same level<sup>34</sup> of benefits as provided under the memoranda of understanding unless there is a mutual agreement to a change.
- III. Unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.
- IV. If there is a change in responsibility for administering<sup>35</sup> benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county may include trial court employees in its benefit plans, as permitted by law or vendor.
- V. The court will reimburse the county for the cost of coverage of trial court employees in county benefit plans.
- VI. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
    1. At the time of implementation of the trial court employee personnel system, if the county administers benefits or the court contracts with the county to administer benefits, the court may either continue to receive benefits from the county as provided in item VI.D or administer benefits

<sup>34</sup> For the purpose of this model, *same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means comparable level of benefits.

<sup>35</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity is responsible for making available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.

directly through the following transition provisions:  
While existing memoranda of understanding remain in effect or for a period of up to 24 months, whichever is longer, counties will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the trial court that it no longer needs the county to administer specified benefits, or the court and the county mutually agree that the county will no longer administer specified benefits.

2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer unrepresented trial court employees' benefits unless notified by the court that it no longer needs the county to administer specified benefits, or the court and the county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.
  3. If, during the 24-month transition period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits.
  4. If the court intends to give notice to the county that it no longer needs the county to administer specified benefits, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.
- B. The court and the county may mutually agree that the county will administer the payroll for trial court employees to facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible.
- C. The counties shall have statutory authority to provide benefits to court employees if such benefits are requested by the court and subject to county concurrence to providing such benefits. A county's agreement to provide such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.

- D. This model does not exclude the possibility that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.

**Recommended Retiree Group Insurance Benefits<sup>36</sup> Model**

- I. This model applies to active trial court employees on the date of implementation of the trial court employee personnel system who retire after implementation of the trial court employee personnel system; this model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.
- II. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.
- III. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>37</sup> of retiree group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If there is a change in responsibility for administering<sup>38</sup> retiree group insurance benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in its retiree group insurance benefit plans as permitted by law or vendor.
- V. The court will reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the court may agree to an alternative arrangement to administer and fund retiree group insurance benefits.

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<sup>36</sup> *Retiree benefits* refers to benefits active trial court employees would receive upon retirement.

<sup>37</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<sup>38</sup> For the purposes of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

- VI. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the retiree group insurance benefits:
- A. In those counties that fund retiree group insurance benefits from excess funds in their retirement systems or prefund retiree group insurance benefits, the county shall administer retiree group insurance benefits to trial court employees who retire from that county retirement system. The county and the court may agree to an alternative arrangement to administer retiree group insurance benefits.
  - B. In all counties not included in item VI.A:
    - 1. At the time of implementation of the trial court employee personnel system, if the court administers retiree group insurance benefits to trial court employees separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
    - 2. At the time of implementation of the trial court employee personnel system, if the county administers retiree group insurance benefits, or if the court contracts with the county to administer retiree group insurance benefits to trial court employees, the court may either continue to receive retiree group insurance benefits from the county as provided in item VII or administer retiree group insurance benefits through the following transition provisions:
      - a) While existing memoranda of understanding remain in effect or for a transition period of up to 24 months, whichever is longer, counties will administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memoranda of understanding, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.
      - b) For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the

county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' retiree group insurance benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

- c) If, during the 24-month transition period, the court decides to offer particular retiree group insurance benefits that are different from what the county is administering, then the court will be responsible for administering those particular retiree group insurance benefits.
- d) If the court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

VII. The counties shall have statutory authority to provide retiree group insurance benefits to court employees if such benefits are requested by the court, subject to county concurrence to provide such benefits. A county's agreement to provide such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.

VIII. This model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans for trial court employees that may be developed subject to meet and confer.

<b>Recommended Federally Regulated Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of federally regulated benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of federally regulated benefits as provided under the memoranda of understanding.
- III. Federally regulated benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If, upon implementation of the trial court employee personnel system, the entity that administers<sup>39</sup> the federally regulated benefit plan is not the court, then an effective date for the transfer of responsibility for administering federally regulated benefits must be determined. This effective date must be established to coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.
- V. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the federally regulated benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
  - B. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:

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<sup>39</sup> For the purpose of this model, the terms administering, administration of, and administers mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.

1. Until the effective date of the transition, counties will administer represented trial court employees' federally regulated benefits as provided in the memoranda of understanding.
  2. Until the effective date of transition, counties will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
  3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue as long as the trial court employees are governed by a plan not offered by the court, but in no event longer than 18 months unless the court and the county agree to continued co-sponsorship.
  4. If, during the co-sponsorship period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits unless the court and county agree to an alternative.
- VI. To facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VII. The court will reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefits plans.
- VIII. This model does not exclude the possibility that the courts may have a future option of participating in other federally regulated benefit plans that may be developed subject to meet and confer.
- IX. The counties shall have statutory authority to co-sponsor federally regulated benefits with the courts to provide such benefits to court employees if such benefits are requested by the court subject to county concurrence to co-sponsor such benefits. A county's agreement to co-sponsor such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.



<b>Recommended Deferred Compensation Plan Benefits Model</b>
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- I. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. Upon implementation of the trial court employee personnel system, the court shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits as provided under the memoranda of understanding.
- IV. If the transition to court employment status causes a change in deferred compensation plans and requires the transfer of court employees' plan balances to the court's deferred compensation plans:
  - A. Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - B. Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court.
- V. Court employees shall continue to be eligible to receive deferred compensation plan benefits from the county or court as follows:
  - A. For purposes of 401(k) plans:
    1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 401(k) deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or
    2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
      - a) Upon transition to the new deferred compensation plan, to give the court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and
      - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may

transfer trial court employees' plan balances to the court's deferred compensation plan.

- B. For purposes of 457 deferred compensation plans:
  - 1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 457 deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable, or
  - 2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
    - a) Upon transition to the new deferred compensation plan, to give the court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county.
    - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the court's deferred compensation plans.
- VI. Deferred compensation plan benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- VII. To facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VIII. The court will reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.
- IX. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees' plan balances from county plans to the court's plans).

- X. This model does not exclude the possibility that the courts may have a future option of participating in other deferred compensation plans that may be developed subject to meet and confer.

<b>Recommended Transition Model</b>
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In addition to the transition recommendations addressed in other models, upon implementation of the trial court employee personnel system:

- I. All court employees who meet the definition of trial court employee who work for the court will be considered court employees.
- II. The terms of any memorandum of understanding shall remain in effect until the memorandum of understanding expires, is amended, or is replaced, subject to meet and confer. Upon expiration of memoranda of understanding, the court shall meet and confer with recognized court employee organizations.
- III. An employee organization that is recognized as a representative of a group of court employees or the exclusive representative of an established bargaining unit of court employees, either by the county or the court, shall be recognized by the court as a representative, or as the exclusive representative, of the same employees.
- IV. If the court is party to any memorandum of understanding with any bargaining unit that includes court employees and that provides for an agency shop provision, the court and employee organization representing the court employees shall be obligated to honor the terms of the agency shop provision (including indemnification provisions, if any) for the duration of the memorandum of understanding. The implementation of the trial court employee personnel system shall not in and of itself cause a new agency shop election.
- V. Unrepresented employees are governed by their employer's personnel policies, procedures, and plans. The implementation of the trial court employee personnel system shall not of itself be a basis for changing the employer's personnel policies, procedures, and plans except where otherwise required by the new trial court employee personnel system (for example, if the existing policies fail to meet standards established within the new personnel system) or by law. The court retains previously existing rights with respect to revising its personnel policies, procedures, and plans.
- VI. In establishing local personnel structures for trial court employees, consideration shall be given to contractual obligations, minimizing disruption of the trial court workforce, and protecting the rights accrued by employees under their current systems. This shall not be interpreted to

mean that prior contractual obligations and rights may not be reconsidered subject to meet and confer, as applicable. Rather, it is intended to acknowledge that both parties should give consideration to past contractual obligations and rights.

- VII. Employment seniority of a court employee on the date of implementation of the trial court employee personnel system, as calculated under the predecessor system, shall be counted toward seniority with the court.
- VIII. The employment status of a court employee as a probationary, permanent, or regular employee shall remain in effect, and the employee shall continue to have that status as a court employee, so that probationary employees will not be required to serve a new probationary period but rather to complete the existing probationary period under the terms of hire, to the extent not prohibited by law.
- IX. The classification and salary rate of a court employee shall remain in effect, at the same classification and salary rate.
- X. Implementation of the trial court employee personnel system will not affect the transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) for purposes of unification.
- XI. Disciplinary action initiated before implementation of the trial court employee personnel system shall remain in effect. Until implementation of the court's employment protection system in accordance with the employment protection system model, any employee who has received disciplinary action or proposed disciplinary action but has not yet exhausted any appeal or administrative remedies under the predecessor personnel system shall use only those appeal or administrative procedures that are available pursuant to the predecessor personnel system. The ultimate disposition of the discipline shall be pursuant to the predecessor personnel system. Any discipline of an employee after the date of implementation of the court's employment protection system, in accordance with the employment protection system model, shall be determined pursuant to the terms of the court's employment protection system, including the administrative procedures contained therein, except in a county of the first class as specified in the employment protection system model. The impact of the court's new employment protection system on past discipline shall be subject to meet and confer, as applicable, at the local level.

- XII. Subject to county agreement and unless prohibited or limited by charter provisions, the policies regarding transfer between the court and the county that are in place upon implementation of the personnel system shall be continued while existing memoranda of understanding remain in effect or for two years, whichever is longer. Any further rights of trial court employees to transfer between the court and the county shall be subject to meet and confer, as applicable, at the local level between representatives of the court and representatives of recognized employee organizations and local negotiation between the court and the county. Subject to county agreement and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that are in effect upon implementation of the personnel system will be continued if trial court or county employees transfer between the court and the county or the county and the court while existing memoranda of understanding remain in effect or for a period of two years, whichever is longer. Any further right of trial court employees to portability is subject to meet and confer, as applicable, between representatives of the court and representatives of recognized employee organizations and local negotiation between the court and the county.
- XIII. Unless otherwise specified in individual models, the implementation date on which the system in each court shall go into effect is the latest date of the following: (a) the effective date of the legislation that enacts a personnel system for trial court employees; or (b) 90 days from the date that such legislation is chaptered. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of any model are governed by an existing memorandum of understanding covering court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

## **PART VII**

### **DEVELOPMENT AND EXPLANATION OF TRIAL COURT EMPLOYEE PERSONNEL STRUCTURE**

#### **General Background**

As mentioned earlier in this report, the task force developed sets of recommendations referred to as models for each component of the new trial court employee personnel structure. The following sections in this part of the final report provide an overview of the development history of each of the models and an explanation of their content.

- A. Classification and salary;
- B. Meet and confer;
- C. Employment protection system;
- D. Employment, selection, and advancement system;
- E. Personnel file access;
- F. Defined-benefit retirement plan;
- G. Accrued leave benefits;
- H. Benefits: group insurance and other employer-provided benefits;
- I. Retiree group insurance benefits;
- J. Federally regulated benefits;
- K. Deferred compensation plan benefits; and
- L. Transition.

At the time the second interim report was published, the task force had drafted 11 preliminary models. As a result of comments received on the second interim report, further deliberations by the task force, and the selection of court as the recommended employee status, the task force modified many of the original 11 models. The task force also adopted two additional models (the employment, selection, and advancement system model and the personnel file access model).

The preliminary 11 models were designed to be applicable regardless of the ultimate employment status of court employees. All models apply to both represented and unrepresented employees, unless specified otherwise. As mentioned in the introduction to Part VI, if a model uses the phrase, “meet and confer, as applicable,” this means the court has the obligation to meet and confer with representatives of recognized employee organizations on matters within the scope of representation. The court does not have the obligation to meet and confer with unrepresented employees.

## **Part VII Development and Explanation of Trial Court Employee Personnel System**

The development and substance of each model adopted by the task force, as well as the consequences of each model under each employment status option for the 11 preliminary models, are discussed in this part of the final report. For historical purposes, the 11 models that appeared in the second interim report are shown in the preliminary version printed in October 1999, followed by the recommended version adopted by the task force in November 1999 and recommended as components of the trial court personnel system. A complete set of the task force's final personnel system recommendations (minus the development history) can also be found in Part VI of this report.



## A. Classification and Salary

### Background

The Act charges the Judicial Council with submitting “findings and recommendations to the Legislature for the establishment of a system of uniform court employee classification, which may provide for local flexibility.”<sup>40</sup>

Classification is the grouping of jobs sufficiently alike with respect to their duties and qualifications to justify their being covered by a single job title and salary. Job classifications are identified for the purpose of establishing salary ranges. The classifications recommended by the Judicial Council “shall include duty statements, minimum qualifications, and salary ranges. The classifications shall be broad enough so that the employees and their managers have maximum flexibility to accommodate the needs of the courts and the employees.”<sup>41</sup>

Although the task force is not specifically charged with making recommendations concerning classification or salary, its members concluded that because classification and salary are integral to any personnel system, a broad policy recommendation to the Judicial Council on these issues should be made. The task force made a recommendation to the Judicial Council on classifications and salaries and provided information collected from the Trial Court Employee Survey. The Judicial Council will use this data on trial court employees when formulating its recommendations to the Legislature for a system of uniform court employee classifications and salary ranges.

### Education: Classification and Salary

Task force members were provided the following education concerning classification and salary:

- An overview of the California trial court system, describing the classification differences and similarities among the trial courts based on the size of the court.
- A presentation on basic classification and compensation concepts, including common terms used in the classification process, such as *job family*, *job series*, *job classification*, *employee*, and *position*. Information was also provided on the importance of job classification as a tool in public personnel management and its use as the foundation for other personnel processes, such as recruitment, selection, training, performance management, and discipline.
- Basic information concerning the relationship of classification to salary, including:

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<sup>40</sup> Gov. Code, § 77605(a).

<sup>41</sup> *Ibid.*

- Grouping similar jobs that perform similar work with nearly the same level of difficulty into job families;
- Creating classifications, equal or comparable in value to the organization, within these job families; and
- Grouping jobs into classifications for the purpose of establishing salary rates.
- Information on various classification and compensation policies and issues, including information about:
  - Specific classification plans;
  - Generic classification plans;
  - Market placement policies; and
  - Factors that may complicate classification and compensation policies.
- A presentation on the personnel structure of the University of California and California State University at both the systemwide and local campus levels, including in-depth information about classification and compensation in these decentralized personnel systems.
- A presentation on the basic personnel structure components of the executive and judicial branches of state government.
- A presentation on the background and current use of the *Trial Court Model Classification Manual*, adopted for use by the trial courts in August 1996.

### **Assumptions and Objectives: Classification and Salary**

The task force used the following assumptions and objectives in developing recommended models for classification and salary:

#### ***Assumptions and Objectives:***

1. The state will not delegate its authority to set the budget level for the courts.
2. Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997.
3. State funding levels will not significantly change as a result of the new personnel structure.
4. Current personnel systems contain substantial variations among counties and courts. These variations may continue to exist under the new system.
5. “. . . The Judicial Council shall submit findings and recommendations to the Legislature relative to the establishment of a system of uniform court employee classifications, which may provide for local flexibility. These classifications shall include duty statements, minimum qualifications and salary ranges. The classifications shall be broad enough so that the employees and their managers have maximum flexibility to accommodate the needs of the courts and the employees.”<sup>42</sup>

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<sup>42</sup> *Ibid.*; Cal. Rules of Court, rule 810.

<b>Preliminary and Recommended Classification Model</b>
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The task force recommends that the Judicial Council:

- I. Create a uniform statewide trial court classification system (uniform classification system) of broad classifications that covers all jobs performed in courts, using the *Trial Court Model Classification Manual* as a starting point and avoiding “other” as a classification.
- II. Establish the uniform classification system as a common classification language for all trial courts, allowing each court to:
  - A. Continue to use its own existing classification titles;
  - B. Determine the appropriate classification for each local court position within the uniform classification system; and
  - C. Establish new local classification titles.
- III. Require that the assignment of a position to a uniform classification by the court be based on duties performed.
- IV. Provide descriptions of:
  - A. Overall general principles and guidelines for establishing minimum qualifications for all classifications by individual courts; and
  - B. Commonly recognized minimum qualifications for individual broad classifications.
- V. Establish a process for maintaining, periodically reviewing, updating, and creating additional broad classifications within the uniform classification system to reflect changes in local court classification plans.

**Considerations: Classification**

The task force used the classification and salary assumptions in developing its broad recommendations to the Judicial Council for the development of a statewide trial court classification system (uniform classification system). The task force was cognizant of the legislative intent of the Act to maintain local flexibility and accommodate the needs of the courts and employees. The model is designed to allow courts to maintain local authority. The classification model created by the task force meets the mandate of the Act.

To meet the required objective of a personnel system that would have uniform statewide applicability and promote organizational and operational flexibility,<sup>43</sup> the task force determined that a common language would be required to create a uniform statewide trial court classification system of broad classifications that cover all jobs performed in the trial courts. The 1996 *Trial Court Model Classification Manual* is recommended as a starting point for the creation of this common language. The uniform classification system will serve as a common language for classification discussions statewide among courts, the Judicial Council, and the executive and legislative branches and will ensure consistency for budgeting and other operational purposes.

The model allows the trial courts to continue to establish and use their own existing classification titles within the broad classifications in the uniform classification system. Each local court will be responsible for determining the appropriate classification for each position within the uniform classification system.

To ensure that trial court positions are appropriately classified, the task force included in its model a requirement that the assignment of a classification within the uniform classification system reflect the actual duties performed by the trial court employee, not merely the title of the classification held. For example, if a position classified as Deputy Clerk at the local level is assigned to perform technical accounting tasks, the trial court should classify this position under the broad classification system as Account Technician, a classification more reflective of the actual duties performed by the employee. Deputy Clerk would continue to be the term used by the local trial court. Account Technician would be the cross-referenced term used in the uniform classification system.

The concept of a uniform statewide trial court classification system can be further illustrated as follows:

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<sup>43</sup> Gov. Code, § 77605(b).

The job titles for positions that perform similar duties might include the following job titles at the local level:

- Deputy Court Clerk;
- Superior Court Clerk; and
- Courtroom Clerk.

These positions might then be described under a broad common-language classification title such as Courtroom Clerk, which would represent one of the uniform classifications within the uniform classification system recommended by the Judicial Council. Courts would use the uniform classification title of Courtroom Clerk to describe their positions that have similar duties. The individual trial courts could continue to use their existing classification titles for local purposes. However, the uniform classification title of Courtroom Clerk would become the term used for discussion regarding classification between courts and the Judicial Council. This common classification language would ensure consistency for budgeting purposes and communication with other state entities.

The Judicial Council would be responsible for recording or documenting the classifications within each local trial court after the courts make a change in their classification plans. If a trial court creates a new classification that is not covered in the uniform classification system, the Judicial Council will be responsible for revising the uniform classification system or creating a new classification to update the uniform classification system to reflect the court's change.

The task force recommends that the Judicial Council develop a method for periodically reviewing, revising, updating, and maintaining the broad classification within the uniform classification system to reflect changes in local court classification plans. The task force concurred that the Judicial Council is the appropriate entity to develop procedures and processes for maintenance of the uniform classification system to reflect changes in the specific classifications made by the local trial courts.

### **Impact Under Each Employment Status Option**

The recommended classification model would essentially work the same under any of the employment status options of state, court, and county, and the impact of the model under each of the status options is generally the same. Under each employment status option, the local trial court would be responsible for classifying positions and allocating them to the broad common-language classification.

**The Recommended Classification Model**

The task force made no changes to the classification model after publication of the second interim report. The preliminary classification model is thus identical to the recommended classification model.

**The Salary Model**

Similar to the classification model, the task force made no changes to the salary model after publishing the second interim report. The model that follows is the task force's recommended salary model.

<b>Preliminary and Recommended Salary Model</b>
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The task force recommends that the Judicial Council:

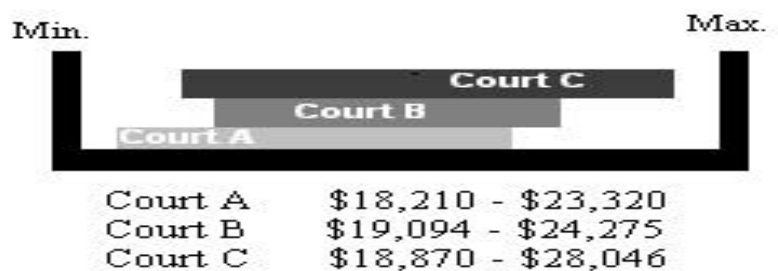
- I. Establish a salary system that allows individual trial courts to establish their own salary ranges based on the local market and other local compensation-related issues such as difficulty of recruitment or retention.
- II. Document existing local salary ranges contained in each uniform classification to create a broad salary register for each uniform statewide trial court classification. The minimum and maximum of the salary register for each uniform classification will be the minimum of the lowest local salary range and the maximum of the highest local salary range. The salary register for each uniform classification reflects actual salaries and does not set them.
- III. Document the local salary ranges that exist at the time of transition to the new trial court personnel system; future local salary range adjustments are subject to local personnel policies, procedures, and plans or meet and confer, where applicable.
- IV. Establish a process for maintaining, reviewing, and updating the broad salary registers to reflect changes in local salary ranges.

**Considerations: Salary**

The recommended salary model is compatible with the assumption that state funding levels will not significantly change as a result of the new personnel structure. The model also meets the intent of the Legislature that no employee in the trial court system shall sustain a salary reduction as a result of the new personnel structure. The recommended salary model creates a system of decentralized management and does not reduce salaries or require substantial cost increases. In keeping with the intent not to reduce the salary of a trial court employee, all court employees will enter the new personnel system with their existing salaries at the time of transition. The task force did not address any issues relating to salary equity since it was not compatible with the assumption that state funding levels would not significantly change and was outside the purview of the task force's legislative charge.

The model creates a salary system by documenting a broad salary register for each uniform classification within the uniform classification system. This is accomplished by documenting the existing local salary ranges of each classification within each local trial court. The current individual local trial court's salary ranges for each of the classifications would be incorporated into the salary register. The minimum and maximum of the salary register for each uniform classification will be the documented minimum of the lowest local salary range and the documented maximum of the highest local salary range. The salary register for each uniform classification reflects actual salaries and does not set them. The composite of current employees' salary ranges in each uniform classification creates the salary register for that classification and reflects existing salaries for that uniform classification.

It is possible that within the broad salary register, the individual trial court ranges may overlap. An example illustrating this point is shown here:

**Courtroom Clerk Salary Register**



As shown in the example, the model allows the current salary range for each individual court to be placed within the broad salary register. Every employee of each individual court will have the ability to advance to the maximum salary within the individual court salary range for his or her own local trial court classification. In the example, a Courtroom Clerk from Court A would be able to advance to a maximum salary of \$23,320; a Courtroom Clerk from Court B would be able to advance to a maximum salary of \$24,275; and a Courtroom Clerk from Court C would be able to advance to a maximum salary of \$28,046.

Concerns were raised that these broad ranges could put a cap on future negotiations. However, as indicated in item III of the model, the local salary ranges are subject to local salary range adjustments and to local personnel policies, procedures, and plans or meet and confer, where applicable. Adjustments made to local salaries as a result of changes to personnel policies, procedures, and plans or as the result of a meet and confer process may require an individual trial court's maximum salary range to move up the salary register. Likewise, the model allows the maximum of the salary register to increase to the level of the salary range in the highest-paying trial court. The model also accommodates the concern of the courts for flexibility in establishing and revising their own salary ranges based on local market and management needs.

After the local courts make changes to their local salary ranges, the Judicial Council would be responsible for documenting and updating the local salaries that make up the salary register. As stated earlier, the salary register created by the Judicial Council reflects actual salaries and does not set them. The task force recommends that the Judicial Council develop a process for maintaining, reviewing, and updating the broad salary registers to reflect any changes in local salary ranges.

### **Impact Under Each Employment Status Option**

The recommended salary model would essentially work the same under any of the employment status options of state, court, and county. Under each employment status option, the courts would be responsible for setting their individual salary ranges and for the impact of those salary ranges on their authorized budgets.

### **The Recommended Salary Model**

As mentioned earlier, the task force made no changes to the salary model after publication of the second interim report. This same model is the final recommended salary model.

## **B. Meet and Confer**

### **Background**

The task force agreed that labor relations is an integral part of a personnel structure for trial court employees. The task force prepared a meet and confer model, which addresses labor relations in the trial courts. The meet and confer model generally defines trial court employees' and trial courts' rights and responsibilities with respect to labor relations.

### **Education: Meet and Confer**

The task force received education from Ms. Deborah Brown, Attorney, Administrative Office of the Courts, regarding labor relations and the meet and confer process in the trial courts. The task force learned about the history of the meet and confer process in the trial courts and received general information about how the Meyers-Milius-Brown Act,<sup>44</sup> the Court Employee Labor Relations Rules,<sup>45</sup> and Assembly Bill 1438,<sup>46</sup> codified at Government Code sections 68650 through 68655, apply to the trial courts and trial court employees.

The task force learned that the Court Employee Labor Relations Rules were adopted in April 1997 and became effective January 1, 1998. The Court Employee Labor Relations Rules extend to trial court employees and the trial courts the right and the responsibility to meet and confer in good faith over matters the court has authority to determine. Government Code sections 68650 through 68655 (the labor relations statute) acknowledge the adoption of the rules and provide that they have the force of law, notwithstanding any other provision of law.

The task force received an overview and interpretation of the procedure for petitioning for relief for a violation of the labor relations statute or the Court Employee Labor Relations Rules under Government Code section 68654. Pursuant to section 68654, parties may petition the Court of Appeal for relief through a writ of mandate under Code of Civil Procedure section 1085. Currently, there are no specific procedures describing how the Court of Appeal would address such a petition.

The task force was provided with information regarding multiple-employer bargaining units. The task force learned that under current law, bargaining units may contain both court and county employees.

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<sup>44</sup> Gov. Code, §§ 3500–3510.

<sup>45</sup> Cal. Rules of Court, rules 2201–2210.

<sup>46</sup> Escutia; Stats. 1997, ch. 857.

The task force also learned about labor relations in other public agencies. Representatives from the University of California, California State University, and California Department of Personnel Administration gave presentations to the task force regarding labor relations in their particular agencies.

The task force was provided with general information regarding the four major public employment labor relations statutes in California: (1) the Higher Education Employer-Employee Relations Act (HEERA), which covers the University of California and the California State University and their employees; (2) the Dills Act (also known as the State Employer-Employee Relations Act, or SEERA), which covers the state executive branch and most of its employees; (3) the Educational Employment Relations Act (EERA), which covers the public schools (K–12) and community colleges and their employees; and (4) the Meyers-Milias-Brown Act (MMBA), which covers local government agencies and their employees.

**Assumptions and Objectives: Meet and Confer**

The task force did not adopt formal assumptions and objectives with respect to a meet and confer model for trial court employees.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. The task force developed a preliminary model that would apply under all three employment status options: state, court, or county. This preliminary model is presented here.

<b>Preliminary Meet and Confer Model<sup>47</sup></b>
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- I. Existing labor relations statutes and the Court Employee Labor Relations Rules of Court remain in place except for changes necessitated by a particular employment status option (state, county, court, or other) or changes related to the enforcement of the Court Employee Labor Relations Rules of Court.
- II. The meet and confer process for each court will be conducted on a local level.
- III. This meet and confer model does not apply to unrepresented employees.
- IV. Employer and representatives of recognized employee organizations shall be authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals.
- V. Unless otherwise agreed, employer and representatives of recognized employee organizations shall negotiate a single agreement for each bargaining unit.
- VI. The Labor Relations Statute, Government Code sections 68650 through 68655, will be amended to provide that:
  - A. If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a reference to make findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
  - B. The Judicial Council shall adopt a Rule of Court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.
- VII. Nothing in this model precludes the establishment of mediation, arbitration, or other procedures through local personnel policies, procedures, and plans, subject to meet and confer, as applicable.

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<sup>47</sup> As used in this model and other assumptions, objectives, and models of the task force, the meaning of the term *meet and confer* is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3) states, “Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

**Preliminary Considerations: Meet and Confer**

The task force clarified the meaning of the term *meet and confer*, both as it is used in this model and in other assumptions, objectives, and models of the task force. For those purposes, the meaning of the term *meet and confer* is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3), which is part of the Court Employee Labor Relations Rules, states, “Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

The task force agreed that the existing Court Employee Labor Relations Rules<sup>48</sup> and the labor relations statute,<sup>49</sup> codified at Government Code sections 68650 through 68655, should remain in place and be changed only as necessitated by a particular status option or as they relate to the enforcement of the Court Employee Labor Relations Rules of Court. The task force slightly modified this recommendation in its recommended model, as explained in more detail in the section “Additional Considerations and the Recommended Meet and Confer Model.”

The task force agreed to one particular modification to the labor relations statute with respect to the enforcement of the Court Employee Labor Relations Rules of Court. The task force was concerned that as currently drafted, the statute does not provide guidance to the appellate courts with respect to how a particular Court of Appeal would address a petition for relief under Government Code section 68654. More specifically, the task force addressed the following scenario: “If, on writ to the Court of Appeal, questions of fact exist, the court may order a referral to a retired judge or justice or a trial court judge. In this situation, who would take evidence and report findings on the disputed questions of fact, and what process would the Court of Appeal use to select the fact-finding referee or special master?” To address the task force’s concern that the affected trial court not be involved in the review of an alleged violation of the labor relations statute or the Court Employee Labor Relations Rules of Court, the task force agreed that the labor relations statute, Government Code sections 68650 through 68655, should be amended to provide the following:

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<sup>48</sup> Cal. Rules of Court, rules 2201–2210.

<sup>49</sup> Assem. Bill 1438 [Escutia]; Stats. 1997, ch. 857.

- If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a referral for the purpose of making findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
- The Judicial Council shall adopt a rule of court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.

The model also clarifies that nothing in the model precludes the establishment of mediation, arbitration, or other procedures through local personnel policies, procedures, or plans, subject to meet and confer, as applicable. For example, as set out above, although a party may petition the Court of Appeal for relief if it believes there has been a violation of the labor relations statute or the Court Employee Labor Relations Rules, there is nothing to prevent the parties from adopting alternative procedures as either preliminary steps to be taken before petitioning the Court of Appeal for relief or as a complete alternative to petitioning the Court of Appeal for relief. As set out more fully in the section “Additional Considerations and the Recommended Meet and Confer Model,” in its recommended model, the task force recommends that courts be required to adopt a procedure, subject to meet and confer, as applicable, as a preliminary step before petitioning the Court of Appeal for relief.

The task force also agreed that the model did not need to address whether court and county employees may remain in the same bargaining unit. Rule 2206 of the California Rules of Court currently states, “Nothing contained in the rules of this division is intended to preclude court employees from continuing to be included in representation units which contain county employees.” The task force agreed that this rule need not be amended.

The task force recognized that the issue of involving the state as the funding source is an outstanding issue. The model itself does not address this issue, and the task force does not believe that it is the appropriate body to address this complicated policy issue.

### **Impact of Preliminary Model Under Each Employment Status Option**

The preliminary meet and confer model applies equally under each employment status option. As indicated in item I of the model, the existing labor relations statute, Government Code sections 68650 through 68655, and the Court Employee Labor Relations Rules, rules 2201 through 2210 of the California Rules of Court, remain in place with the exception of any changes necessitated by a particular status option and the particular change referenced in item VI of the preliminary model related to the enforcement of the statute and rules.

Item IV of the preliminary model states that employer and representatives of recognized employee organizations are authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals. Under each employment status option, the employer with whom representatives of recognized employee organizations meet and confer changes. Under the state employment status option, representatives of recognized employee organizations negotiate with the local trial court administration with the involvement of the state judicial branch. Under the court employment status option, representatives of recognized employee organizations negotiate with the local trial court administration. Under the county employment status option, representatives of recognized employee organizations negotiate with county and local trial court administrations.

In addition, under each employment status option, the employer with the final authority to determine economic and noneconomic benefits also changes. Under the state employment status option, the court, with the involvement of the state judicial branch, has the authority to determine economic and noneconomic benefits. Under the court employment status option, the court has the authority to determine economic and noneconomic benefits. Under the county employment status option, the county board of supervisors and the court jointly have the authority to determine economic and noneconomic benefits.

Under each employment status option, the state determines the funding level of the courts. A concern was raised regarding the possibility of a situation in which negotiations between representatives of recognized employee organizations and the employer take place before the level of state funding is known. In this situation, a memorandum of understanding may be adopted that includes salary increases for local court employees when it is unknown whether the state ultimately will provide the funding for the salary increases. The task force concluded that an outstanding issue that eventually needs to be addressed in another forum is how to involve the state as the funding source in the meet and confer process under each of the employment status options.

### **Additional Considerations and the Recommended Meet and Confer Model**

Following the issuance of the second interim report, the task force modified the meet and confer model in several respects. First, item I of the model was clarified to show that the labor relations statute regarding court employees,<sup>50</sup> Government Code sections 68650 through 68655, shall remain in effect except for specified changes, as shown in the model, related to the enforcement of the existing Court Employee Labor Relations Rules of Court.

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<sup>50</sup> Assem. Bill 1438 [Escutia]; Stats. 1997, ch. 857.

In the preliminary model, the task force also recommended that the Court Employee Labor Relations Rules of Court remain in place; however, the task force has now modified that recommendation. As shown in item II of the model, the task force recommends that the Court Employee Labor Relations Rules be codified. In this codification, any particular cross-references to sections of the Meyers-Milias-Brown Act (MMBA) shall be replaced with specific language from those sections as the MMBA read on April 23, 1997.<sup>51</sup> This is necessary so that the codified Court Employee Labor Relations Rules, together with the Court Employee Labor Relations Statute,<sup>52</sup> may be read as an integrated statutory scheme, without need to cross-reference sections of the MMBA. Item III further clarifies this point and also emphasizes the court employment status by stating that under the new personnel system, court employees will not be covered by the MMBA or any subsequent changes to the MMBA.

An additional modification to the model is shown in item VI. This addition clarifies that nothing in the meet and confer model is intended to preclude joint county and court negotiations with recognized employee organizations. Currently, some courts may negotiate jointly with the county with recognized employee organizations, with the consent of the parties. Under the recommended model, if the parties consent, this practice may continue under the new personnel system.

The next modification to the model is shown in item VIII, which combines and replaces items VI and VII in the preliminary model. As stated in the preliminary considerations, Government Code section 68654 currently provides, “In the event that a court, a court employee, or an employee organization believes there has been a violation of this chapter or Rules 2201 to 2210, inclusive, of the California Rules of Court, that party may petition the Court of Appeal for relief.” Item VIII.A of the model provides that each trial court must adopt a procedure, subject to meet and confer, as applicable, as a preliminary step to be taken before petitioning the Court of Appeal for relief as provided in section 68654. Examples of the type of procedure a court may adopt include mediation, arbitration, or a proceeding before an administrative tribunal such as that used for review of the decision of the hearing officer in evidentiary due process hearings, which is described in more detail in the section explaining the employment protection system model, Part VII.C. One qualification was added for courts with 10 or more judges. In such courts, if the parties reach impasse regarding the appropriate procedure to adopt as the preliminary step, the court is limited to two particular procedures that it may adopt: nonbinding arbitration or a proceeding before the administrative tribunal used for review of the decision of the hearing officer in an evidentiary due process

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<sup>51</sup> This particular date was chosen as it is referenced in Government Code § 68650 as follows, “Notwithstanding any other provision of law, these rules [the Court Employee Labor Relations Rules] shall be given full force and effect, and shall be maintained as adopted by the Judicial Council on April 23, 1997.”

<sup>52</sup> Government Code, §§ 68650–68655.



hearing. As explained in the section describing the employment protection system model, Part VII.C, the administrative tribunal's decision is by majority vote.

Item VIII.A also adds that the parties may provide for a complete alternative to petitioning the Court of Appeal for relief pursuant to section 68654 by mutual agreement between the court and representatives of the recognized employee organization.

The final modification to the model is shown in item IX. Item IX addresses agency shops. *Agency shop* means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such an organization.<sup>53</sup> Employees who are members of religious organizations, bodies, or sects that have conscientious objections to joining or financially supporting public employee organizations may be required to pay sums of money equal to the agency shop fees to charity in lieu of paying the agency shop fees.<sup>54</sup>

Currently, Rule 2209(d) of the Court Employee Labor Relations Rules addresses agency shop provisions in the trial courts. Rule 2209(d) incorporates by reference the section of the MMBA addressing agency shop provisions, Government Code section 3502.5.<sup>55</sup> In general, the MMBA provides that an agency shop agreement may be negotiated between the employer and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent.<sup>56</sup> Pursuant to the MMBA, agency shop agreements last for the duration of the agreement or for a period of three years from the effective date of such agreement, whichever comes first.<sup>57</sup> Under the MMBA, unless negotiated by mutual agreement otherwise, an agency shop provision in a memorandum of understanding may be rescinded by a majority vote of the employees in the unit covered by the memorandum of understanding, provided that (1) the vote is requested via a petition containing the signatures of at least 30 percent of the employees in the unit, (2) the vote is by secret ballot, and (3) the vote is not taken more than once during the term of the memorandum of understanding.<sup>58</sup> The MMBA states that an agency shop agreement shall not apply to management, confidential, and supervisory employees.<sup>59</sup> The MMBA also imposes record-

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<sup>53</sup> See Gov. Code, § 3502.5(a).

<sup>54</sup> Gov. Code, § 3502.5(a).

<sup>55</sup> Agency shop agreements may also be referred to as organizational security agreements.

<sup>56</sup> Gov. Code, § 3502.5(a).

<sup>57</sup> *Ibid.*

<sup>58</sup> Gov. Code, § 3502.5(b).

<sup>59</sup> Gov. Code, § 3502.5(c).

keeping requirements upon the recognized employee organization that has an agency shop provision.<sup>60</sup>

In the 1999–2000 legislative session, a bill was introduced that would modify the MMBA to add an additional way for an agency shop arrangement to take place.<sup>61</sup> This bill would provide that in addition to an agreement between an employer and the recognized employee organization, an agency shop arrangement shall be placed in effect without a negotiated agreement upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop arrangement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in favor of the agency shop arrangement.<sup>62</sup>

Item IX states that if certain conditions are met, the codified Court Employee Labor Relations Rules will be amended to provide that a 30 percent showing of interest by means of a petition triggers an election, and a showing of 50 percent plus one of those voting secures an agency shop arrangement. The conditions precedent to amending the codified Court Employee Labor Relations Rules as indicated are as follows: (1) the legislature must pass and the Governor must sign such legislation modifying the MMBA; and (2) the codified Court Employee Labor Relations Rules must be further modified to include a provision that, with respect to any particular court, the amendment will be effective only if the court and representatives of the recognized employee organizations, through the meet and confer process, establish a provision that the employee organization shall hold harmless the court and defend and indemnify the court regarding the application of any agency shop requirements or provisions, including but not limited to improper deduction of fees, maintenance of records, or improper reporting.

Item IX also states when this amendment would go into effect. As statutes are constitutionally prohibited from impairing contracts, to avoid unconstitutionally impairing existing memoranda of understanding that may contain agency shop provisions, the amendment would go into effect if the above-referenced conditions are satisfied on the latest of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. However, to avoid unconstitutionally impairing contracts (memoranda of understanding), in the event that a memorandum of understanding between the court and an employee organization is in effect on the later of either of the dates referenced in (1) or (2), or if the MMBA and the codified Court Employee Labor Relations Rules are modified as specified above after the 2000–2001 legislative session, as to such employees covered by

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<sup>60</sup> Gov. Code, § 3502.5(d).

<sup>61</sup> Sen. Bill 739 (1999–2000 legislative session).

<sup>62</sup> *Ibid.*

such memorandum of understanding the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding. The court and representatives of recognized employee organizations may mutually agree to a different effective date.

**Recommended Meet and Confer<sup>63</sup> Model**

- I. The existing labor relations statutes regarding court employees (Government Code sections 68650 through 68655) remain in place except for changes related to the enforcement of the existing Court Employee Labor Relations Rules of Court.
- II. The Court Employee Labor Relations Rules of Court shall be codified; Meyers Miliias Brown Act (MMBA) section references in the codification shall be replaced with specific language from the particular section of the MMBA referenced as the MMBA read on April 23, 1997 and any references to the MMBA itself shall be deleted.
- III. Trial courts and court employees will not be covered by the MMBA or any subsequent changes to the MMBA.
- IV. The meet and confer process for each court will be conducted on a local level.
- V. This meet and confer model does not apply to unrepresented employees.
- VI. The court's representatives and representatives of recognized employee organizations shall meet and confer and be authorized to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals. Nothing in this model is intended to preclude joint county and court negotiations with recognized employee organizations, subject to mutual agreement between the court and the county.
- VII. Unless otherwise agreed, the court and representatives of recognized employee organizations shall negotiate a single agreement for each bargaining unit.

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<sup>63</sup> As used in this model and other assumptions, objectives, and models of the task force, the term meet and confer is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3) states, "Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent."

- VIII. The Labor Relations Statute, Government Code sections 68650 through 68655, will be amended to provide that:
- A. Each trial court shall adopt a procedure, such as mediation, arbitration, or a proceeding before an administrative tribunal such as that used for review of the decision of the hearing officer in evidentiary due process hearings as described in the employment protection system model, subject to meet and confer as applicable, as a preliminary step to be taken before petitioning the Court of Appeal for relief pursuant to Government Code section 68654. In those courts with 10 or more judges, in the event that the parties reach impasse regarding this procedure, the court may select only nonbinding arbitration or a proceeding before the administrative tribunal used for review of the decision of the hearing officer in evidentiary due process hearings. A complete alternative to petitioning the Court of Appeal for relief pursuant to Government Code section 68654 may be provided for by mutual agreement between the court and representatives of recognized employee organizations;
  - B. If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a reference to make findings of facts, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
  - C. The Judicial Council shall adopt a Rule of Court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.
- IX. The codified Court Employee Labor Relations Rules will be amended to provide that a 30 percent showing of interest by means of a petition triggers an election and 50 percent plus one of those voting secures an agency shop arrangement only if the legislature passes and the Governor signs such legislation modifying the MMBA, as long as the codified Court Employee Labor Relations Rules are further modified to include a provision that, with respect to any particular court, the amendment will be effective only if the court and representatives of the recognized employee organizations, through the meet and confer process, establish a provision that the employee organization shall hold harmless the court and defend and indemnify the court regarding the application of any agency shop requirements or provisions, including but not limited to, improper deduction of fees, maintenance of records, and improper reporting. To avoid unconstitutionally impairing contracts, this amendment shall go into effect if the above-referenced conditions are satisfied on the latest of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees; (2) 90 days from the date that such legislation is chaptered; or (3) in the event that a memorandum of

understanding between the court and an employee organization is in effect on the later of either of the dates referenced in (1) or (2), or if the MMBA and the codified Court Employee Labor Relations Rules are modified as specified above after the 2000–2001 legislative session, as to such employees covered by such memorandum of understanding, the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding. The court and representatives of recognized employee organizations may mutually agree to a different effective date.

## C. Employment Protection System

### Background

The task force agreed that an employment protection system is an integral part of a personnel structure for trial court employees. As defined by the task force, an employment protection system is a system that defines and establishes for employees the scope of rights that pertain to their employment.

### Education: Employment Protection System

The task force received education from Ms. Deborah Brown, Attorney, Administrative Office of the Courts, regarding the various types of employment protection systems that currently apply to trial court employees, as well as other systems applicable to state and local government employees.

In the process of learning about employment protection systems, the task force received education about the following:

- At-will employment;
- Employment that may be terminated for cause;
- Employer personnel policies and procedures;
- Merit systems;
- Civil service systems; and
- Collective bargaining, including meet and confer requirements.

During the course of discussing an employment protection system that includes a “cause” standard for discipline, the task force learned that a generally accepted definition of *cause* is, “A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.”<sup>64</sup> The task force also received education regarding the consequences of a system that includes a cause standard for discipline up to and including termination, including the procedural due process protections that a public employee has under such a system. These procedural due process protections are discussed in more detail in the section entitled, “Preliminary Considerations: Employment Protection System.”

In addition, the task force received information regarding the availability of a civil service system for court employees under state, court, and county employment status options. The task force learned that under the state judicial branch status option, the California Constitution, article VII, section 4, precludes trial court employees from inclusion in the state civil service system. Under the court employment status option, no civil service system specifically for the courts

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<sup>64</sup> *Pugh v. Sees Candies* (1981) 116 Cal.App.3d 311, 330.

presently exists. If a civil service system were to be created under the court employment status option, the Legislature would need to approve statutory amendments. Under the county employment status option, county civil service systems currently are available in some, but not all, counties.

**Assumptions and Objectives: Employment Protection System**

The task force did not adopt formal assumptions and objectives with respect to an employment protection system for trial court employees. However, in the course of discussing alternative employment protection systems, the task force agreed to the following approach for an employment protection system for trial court employees:

- Aim for broad provisions;
- Achieve a system with statewide applicability;
- Achieve a system with local flexibility;
- Identify core elements and principles; and
- Provide the ability to organize at the local level.<sup>65</sup>

The task force also agreed that the model should consider potential disruption to trial courts and identify the employees to whom the model would apply.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. The preliminary model is presented here.

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<sup>65</sup> Issues relating to the meet and confer process, including the ability to organize at a local level, are discussed in Part VII.B.



<b>Preliminary Employment Protection System Model</b>
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- I. An employment protection system is legally available to the extent it is not excluded by the Constitution. To the extent that the particular employment protection system proposed by the task force is precluded by statute, statutory amendments may be necessary.
- II. No changes are recommended to local systems, except that each local system shall include, but not be limited to, the following elements:
  - A. Employees may be laid off based on the organizational necessity<sup>66</sup> of the court. Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.<sup>67</sup>
  - B. The employee protection system shall include progressive discipline, as defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - C. *Employees*, as used in item II, means all employees other than:
    1. Subordinate judicial officers (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639); and
    2. Managerial, confidential, temporary, limited-term, and probationary<sup>68</sup> employees, who may be excluded from this employment protection system in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - D. This employment protection system shall not alter the fact that court employment is authorized and established by statute, and the termination of such employment shall not be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract, either implied or express. Unless modified through meet and confer or local trial court personnel policies, procedures, or plans, the procedure for any employee seeking a remedy who believes that the employing court has not complied with this employment protection system or who challenges the disciplinary decision shall be to first exhaust available administrative remedies provided by the employing court. In providing such administrative remedies, the employing court shall establish a lawful due process

<sup>66</sup> A layoff for organizational necessity means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

<sup>67</sup> A generally accepted definition of *cause* is, "A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power" (*Pugh v. Sees Candies* (1981) 116 Cal. App.3d 311, 330).

<sup>68</sup> Probationary employees sometimes are referred to as introductory employees.

procedure to review disciplinary decisions that by law require a due process procedure. The lawful due process procedure shall be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.<sup>69</sup> Any impartial hearing officer required by the lawful due process procedure in a postdeprivation due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable. At a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court. The denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate.

- III. Nothing herein shall preclude the provision of enhanced employment protection systems through meet and confer or local trial court personnel policies, procedures, or plans.
- IV. The employment protection system in each court shall go into effect on the effective date of the legislation that enacts a personnel system for trial court employees, or 90 days from the date that such legislation is chaptered, whichever is later, unless the employer and representatives of recognized employee organizations mutually agree to a different effective date.

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<sup>69</sup> Under the state and federal Constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements. (See *Board of Regents v. Roth* (1972) 408 U.S. 564, 576–77; Cal. Const. art. I, § 7.) In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that at a minimum, preremoval safeguards must include (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials on which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. In addition to these preremoval safeguards, the employee also is entitled to a postdeprivation due process hearing, which can be given before or after the discipline or discharge is imposed. (See *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545–47.) In general, the following elements are typical in a postdeprivation due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.

**Preliminary Considerations: Employment Protection System**

The task force determined that it was necessary to establish a fair and equitable minimum employment protection standard for all trial court employees. The task force thus identified two core elements to be included in the employment protection system for trial court employees. First, discipline of trial court employees shall be for cause, with certain exceptions specified in the model. Second, the trial court employment protection system shall include progressive discipline.

The task force recognized that many court employees currently may have employment protection systems that include progressive discipline and a cause standard for discipline. However, in creating an employment protection system model, the task force determined that these core elements should be considered minimum standards for all trial court employees. The task force identified these core elements as the minimum standard to provide court employees with a fair employment protection system.

In creating the preliminary model, the task force considered that courts should maintain the authority to lay off employees based on the organizational necessity of the court. Thus, the preliminary model states, “Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.” A layoff for organizational necessity is defined as “a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.”

The task force also discussed and resolved to whom the model should apply. Subordinate judicial officers are excluded from the employment protection model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did not define the terms *managerial*, *confidential*, *temporary*, *limited term*, and *probationary* but instead determined that those terms should be defined through local procedures, subject to meet and confer, as applicable.

By including a cause standard for discipline up to and including termination, the employment protection system model provides trial court employees with a property interest in their employment. Under the state and federal Constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements.

Thus, under the employment protection system model, the employer would be required to comply with procedural due process requirements. In *Skelly v. State*

*Personnel Board*,<sup>70</sup> the California Supreme Court held that at a minimum, preremoval safeguards required by procedural due process must include: (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline.

In addition to these preremoval safeguards, employees also are entitled to an evidentiary due process hearing, which can be given before or after the discipline or discharge is imposed.<sup>71</sup> In general, the following elements are typical in an evidentiary due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.

With respect to the evidentiary hearing required by procedural due process, the task force expressed concern that any impartial hearing officer required in an evidentiary due process hearing be appointed through procedures adopted through the meet and confer process, as applicable. Where the meet and confer process is not applicable, the court must adopt local procedures to appoint such an impartial hearing officer. Regardless of the method of adoption of procedures to appoint such an impartial hearing officer, the model states that at a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court.

Questions arose with respect to whether the impartial hearing officer's (or decision maker's) findings of fact and conclusions would be advisory to the employer or binding upon the employer. At the time the second interim report was issued, the task force was still considering this issue and had not yet proposed a final recommendation with respect to the hearing officer's conclusions. Following the issuance of the second interim report, the task force addressed this issue and modified the employment protection system model substantially to reflect its final recommendations. These modifications are discussed in detail in the section "Additional Considerations and the Recommended Employment Protection System Model."

The task force also discussed when the employment protection system should go into effect. Members of the task force expressed a desire that the employment protection system go into effect as soon as reasonably possible. The task force considered that in those courts with a represented workforce, the employer and trial court employee representatives would need to meet and confer regarding the

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<sup>70</sup> *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215.

<sup>71</sup> *Townsel v. San Diego Metropolitan Transit Development Board* (1998) 65 Cal.App.4th 940, 948–49.

details of the employment protection system. For example, as referenced in item II.C.2 of the preliminary model, the employer and trial court employee representatives would need to meet and confer over the definition of managerial, confidential, temporary, limited-term, and probationary employees and whether they will be included or excluded from the employment protection system. Additionally, the employer and trial court employee representatives would need to meet and confer over the specifics of the lawful due process procedure described in item II.D of the preliminary model. In deciding upon a reasonable amount of time for this process to take place, the task force considered the importance of this issue to the employees.

The task force determined that a reasonable amount of time for the employer to develop the details of the model, subject to meet and confer, would be approximately 90 days. Item IV of the preliminary model states that the employment protection system in each court shall go into effect on the effective date of the legislation that enacts a personnel system for trial court employees, or 90 days from the date that such legislation is chaptered, whichever is later, unless the employer and representatives of recognized employee organizations mutually agree to a different effective date. Therefore, for example, if the Governor signs legislation on October 6, 2000 (the chapter date is usually that day or the next day), that has an effective date of January 1, 2001, then the employer and trial court employee representatives will have until January 4, 2001, 90 days, in which to meet and confer over the details of the employment protection system. Alternatively, if the chapter date of the legislation is September 1, 2000, and the effective date of the legislation is January 1, 2001, then the employer and the trial court employee representatives will have until January 1, 2001, approximately 120 days, in which to meet and confer over the details of the employment protection system. Additionally, for represented workforces, the employer and representatives of recognized employee organizations may mutually agree to a different effective date for the employee protection system. This recommendation was modified in the recommended model to avoid unconstitutionally impairing existing contracts, or memoranda of understanding, between the court or county and recognized employee organizations. The modifications to this recommendation are explained in detail in the section “Additional Considerations and the Recommended Employment Protection System Model.”

Another issue raised by the task force that is not specifically addressed in this model is the statutory rights that trial court employees currently have with respect to whistle blowing and retaliation by virtue of being considered county employees. The task force is concerned that trial court employees maintain the existing statutory protections with respect to whistle blowing and retaliation that currently apply to trial court employees as county employees. The task force agreed that, depending on which employment status the Legislature ultimately provides for

trial court employees, statutory amendments may be required to maintain the statutory protections that currently apply to trial court employees as county employees with respect to whistle blowing and retaliation.

**Impact of Preliminary Model Under Each Employment Status Option**

The preliminary employment protection system model applies equally under each employment status option. The preliminary employment protection system model addresses the issue of employment protection from a broad policy perspective by identifying the core elements of an employment protection system and leaving the details of the system to the trial courts. By stating that “[n]o changes are recommended to existing systems, except that each local system shall include, but not be limited to, the [elements identified in the model],” the preliminary model proposes a floor, or minimum standard, which all trial courts must provide to the employees specified in the preliminary model. The preliminary model does not provide a ceiling for employee rights. Therefore, under the preliminary model, employees currently in at-will systems will be provided with the additional rights identified in the model.

The model states that court employment protection systems shall include progressive discipline. Under the model, progressive discipline will be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer requirements, as applicable. Thus, those courts that currently do not have progressive discipline will be required to adopt a policy of progressive discipline.

The employment protection system model includes a cause standard for discipline up to and including termination. Those courts that currently do not have a cause standard for discipline, but instead have a system with fewer rights for employees (for example, an at-will system), at a minimum will be required to adopt a cause standard for discipline as set forth in the employment protection system model.

By including a cause standard for discipline up to and including termination, the employment protection system provides trial court employees with a property interest in their employment, which is protected by the due process clauses of the federal and state Constitutions. Thus, procedural due process rights would attach in such a system. If courts currently do not have lawful due process procedures for reviewing disciplinary decisions that by law require a due process procedure, they must establish them. Moreover, as specified in the model, the lawful due process procedure must include a procedure to appoint an impartial hearing officer in an evidentiary due process hearing. This impartial hearing officer may not be an employee or judge of the employing court.

Subordinate judicial officers are excluded from the model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be

excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did not define the terms *managerial*, *confidential*, *temporary*, *limited term*, or *probationary* but instead left the definitions of those terms up to local procedures, subject to meet and confer requirements, as applicable.

### **Additional Considerations and the Recommended Employment Protection System Model**

Following the distribution of the second interim report, the task force made substantial modifications to particular sections of the employment protection system model. After significant discussion with task force members and their constituencies and consideration of the concerns of the respective groups, modifications were made to the employment protection system model. These modifications reflect the task force's desire that the employment protection system for court employees be comprehensive, credible, and objective.

As a comprehensive system, the employment protection system shall become the minimum employment protection system for all trial court employees (with the exceptions noted in the model) and shall become part of the sole trial court employee personnel system. As indicated in item II, the trial court employment protection system shall replace county employment protection systems applying to trial court employees prior to the implementation date except as specified within the model. To ensure that the trial court employment protection system becomes the minimum employment protection system for all trial courts, the task force recognized in the model that statutory amendments will be required.

The task force is recommending this uniform employment protection system for all trial courts as a fair system, which avoids the two-tiered system that currently is in effect in some courts that have grandparented county civil service or merit systems for some employees. As stated in Part VII.D, which describes the trial court employment, selection, and advancement system, the task force has avoided recommending two-tiered systems in all aspects of the new trial court employee personnel system.

Item III.A of the model has been modified slightly. As indicated in the preliminary model, employees may be laid off based on the organizational necessity of the court. The recommended model adds that the local trial court shall develop personnel rules regarding procedures for layoffs, subject to meet and confer, as applicable.

The primary modifications to the model are shown in items III.G through III.M. In these sections, the model describes the minimum standards for an evidentiary due

process hearing required by the lawful due process procedure.<sup>72</sup> The modifications to the sections regarding evidentiary due process hearings were designed to ensure satisfaction with the process by all parties.

As indicated in the preliminary model, any impartial hearing officer required by the lawful due process procedure in an evidentiary due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable. In addition, the impartial hearing officer may not be an employee or judge of the employing court. In the recommended model, the task force offers options for selection of the hearing officer that the court may consider. These options include but are not limited to a mutual strike-out system or a mutual selection system. In determining how to select an impartial hearing officer, courts shall consider using an outside organization for submission of names of potential hearing officers. An example of how this may occur is that the court may provide for selection of a hearing officer by agreement of the parties; however, if after a period of time, the parties cannot agree upon a hearing officer, the parties may receive a list of names from an outside organization and then proceed to strike out names until only one name is left.

As shown in item III.G, the evidentiary due process hearing must take place under state and federal standards and must include at a minimum the following elements: (1) the hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that incorporate the evidence; (2) the employee and employer shall have the right to call witnesses and present favorable evidence, and the employer shall be required to release employees to testify at the hearing; (3) the employee has the right to representation, including legal counsel, if provided by the employee; and (4) the hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in California Code of Civil Procedure section 1282.6.

In general, the first three of the minimum standards described in the preceding paragraph are required by law. The fourth minimum standard has been added as it is a typical component of an arbitration proceeding and will assist both the court and employee in achieving a fair hearing in which all necessary evidence may be presented by both parties. As proposed, in an evidentiary due process hearing, the hearing officer would have the authority to respond to parties' requests for subpoenas and subpoenas duces tecum and, on his or her own determination, issue

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<sup>72</sup> In the recommended model, the term "evidentiary due process hearing" replaces the term "post-deprivation due process hearing," as it is a more commonly used term to describe the hearing and also more accurately reflects that this hearing may be provided before or after the discipline or discharge is imposed.



subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence.

An additional minimum standard proposed by the task force in item III.G is that if the hearing officer disagrees with the court's disciplinary decision, the local trial court shall be responsible for furnishing a copy of the record of the proceedings before the hearing officer to the employee who is challenging his or her discipline or, if the employee is represented by a union or counsel, to the employee's bargaining representative or counsel, without cost.

Item III.H sets forth the standard of review by the trial court of the hearing officer's report and recommendation. First, with respect to factual findings of the hearing officer, the court is bound by the material factual findings of the hearing officer except for material factual findings that are not supported by substantial evidence. The terms *material factual findings* and *substantial evidence* are legal terms. A common definition for a material fact is "a fact that is significant or essential to the issue or matter at hand."<sup>73</sup> A common definition for substantial evidence is "evidence that a reasonable mind would accept as adequate to support a conclusion; evidence beyond a scintilla."<sup>74</sup>

With respect to the acceptance or rejection of the hearing officer's report and recommendation, the court is to give substantial deference to the recommended disposition of the hearing officer and may not reject or modify the recommendation except pursuant to a written statement specifying the reason or reasons why the recommended disposition is rejected. This statement of reasons must have direct reference to the facts found by the hearing officer and specify whether the facts found by the hearing officer are supported by substantial evidence. Thus, although the court may reject or modify the hearing officer's recommendation following certain minimum standards, it may do so only after giving the hearing officer's report and recommendation serious consideration and may not do so arbitrarily.

Item III.H.2 sets forth the reasons why the court may reject the recommendation of the hearing officer. First, the court may reject the hearing officer's recommendation if the material factual findings made by the hearing officer are not supported by substantial evidence. Second, the court may reject the hearing officer's recommendation for the following reasons or reasons of substantially similar gravity or significance: (1) the recommendation places an employee or the

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<sup>73</sup> *Black's Law Dictionary*, Seventh Ed. (1999).

<sup>74</sup> *Ibid.* See also, *Estate of Teed* (1952) 112 Cal.App.2d 638, 644, stating, "[S]ubstantial . . . clearly implies that such evidence must be of ponderable legal significance. . . . It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case."

public at an unacceptable risk of physical harm from an objective point of view; (2) the recommendation requires an act contrary to law; (3) the recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view; (4) the recommendation disagrees with the court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement; (5) the recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider and/or distinguish; or (6) the recommendation, from an objective point of view and applied by the court in a good faith manner, exposes the court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

The list of reasons referenced above that a court may rely upon to reject the hearing officer's recommendation contain additional legal terms: *objective point of view* and *good faith manner*. A common definition for *objective point of view* is a "legal standard that is based on conduct and perceptions external to a particular person."<sup>75</sup> An objective standard refers to a reasonable person's point of view as compared to a subjective standard, which would refer solely to a particular person's point of view. The term *good faith* is used in a variety of legal contexts. A common definition of *good faith* is "a state of mind consisting in honesty in belief or purpose [and] faithfulness to one's duty or obligation. . . ."<sup>76</sup>

Examples of some of the reasons a trial court may rely upon to reject the hearing officer's recommendation follow. A situation may arise in which a hearing officer agrees with the facts presented by the court, but decides to change the discipline recommendation without referencing material, substantial evidence in the record for so doing. This situation is an example of subparagraph (4) above and provides the court with a reason upon which to reject the hearing officer's recommendation. Another situation may arise if the court has discharged an employee for sexual harassment and the hearing officer makes a recommendation that the court should suspend, rather than discharge, the employee. This situation may implicate subparagraph (6) above. If the court determines in good faith and from a reasonable perspective that returning the employee to the workplace would expose the court to present or future legal liability, such as the threat of a lawsuit by those who initially complained of sexual harassment or others who may be placed in such a situation in the future, the court may reject the hearing officer's recommendation.

Item III.I sets forth the trial court's process of review of the hearing officer's report and recommendation; in other words, who in the court will make the

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<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

decision to reject or substantially modify the hearing officer's recommendation. That process shall be established in local personnel rules, subject to meet and confer, as applicable. At a minimum, the process of review must provide that the decision of the hearing officer shall be subject to review as described above (and in item III.H of the model) except that if the court determines to reject or substantially modify the recommendation of the hearing officer, that review must be done by an individual or group of individuals other than the disciplining officer of the court. Under this standard, although the disciplining officer may conduct the first review of the hearing officer's report and recommendation, the disciplining officer must refer it to another individual or group of individuals for review if the disciplining officer disagrees with the hearing officer's recommendation. Therefore, as a general rule for courts that have more than two judges but fewer than ten judges, if the disciplining officer is a judge of the court, a review that results in rejection or substantial modification of the hearing officer's recommendation must be performed by another judge of the court, a judicial committee, an individual, or a panel, as specified in local personnel rules. One exception to this general rule is in a court with two or fewer judges. In a court with two or fewer judges, if the court has no other judge than the disciplining judge or judges, such judge or judges may conduct the review.

Also, under the standard set forth in Item III.I, in those courts with ten or more judges, as a minimum requirement, the review shall be by a panel of three judges whose decision shall be by a majority vote. One judge shall be selected by the presiding judge or his or her designee. One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative. The two appointed judges shall select the third judge. No judge may be selected to serve without his or her consent, and no judge may serve on the panel in a case in which he or she has imposed discipline. The term of office of the panel shall be defined by local personnel policies, procedures, or plans, subject to meet and confer, as applicable.

Item III.J sets forth the time for the trial court to review the hearing officer's report and recommendation. Here, the task force's recommendation is that this amount of time needs to be reasonable for both the court and the disciplined employee. As such, the model states that the trial court shall have 30 calendar days from receipt of the decision of the hearing officer or from receipt of the record of the hearing, whichever is later, to accept or reject the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different time frame.

As stated in the preliminary model, the denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate. In item III.K of the recommended model, the task

force has clarified that if the disciplined employee challenges the decision of the disciplining court rejecting or modifying the hearing officer's proposed discipline, the employee may file a writ of administrative mandamus under Code of Civil Procedure section 1094.5 in the appropriate tribunal. In addition, in employee challenges to the decision of the court rejecting or modifying the hearing officer's proposed discipline, if required by the writ procedure and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented by a bargaining representative, to the bargaining representative, without charge. The reviewing court shall base its review on the entire record. In addition, in reviewing the rejection by the disciplining court of the recommendation of the hearing officer, the reviewing court shall be bound by the material factual findings of the hearing officer that are supported by substantial evidence.

Item III.M sets forth one exception to the earlier statement that the employment protection system shall replace county employment protection systems applying to trial court employees prior to the implementation date. This exception is limited to (1) court employees who are members of the Los Angeles County civil service system at the time of implementation of a personnel system for trial court employees, and (2) the evidentiary due process hearing required by a lawful due process procedure. For those court employees who are members of the Los Angeles County civil service system at the time of implementation of a personnel system for trial court employees, those employees will have the right to elect, as an alternative to the above described evidentiary due process hearing, to have an evidentiary due process hearing before the county civil service commission.

Certain procedures must be followed for this election to be effective. The election to remain in the county civil service system for the purpose of receiving evidentiary due process hearings before the county civil service system only shall be made not later than one year after the date of implementation of the personnel system for trial court employees. If an employee does not elect to remain in the county civil service system for this purpose only within that time frame, the employee will automatically be subject to the trial court employment protection system for all purposes.

In addition, there are certain restrictions upon this election. A court employee may not make this election after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. Court employees who initially elect to remain in the county civil service system for this purpose may elect at any time to be subject to the trial court employment protection system except after receiving notice of

intended discipline as described above. The election to be subject to the trial court employment protection system may not be reversed.

Court employees also may automatically become subject to the trial court employment protection system for all purposes in the event that a court employee who initially elects to remain in the county civil service system for this purpose later is promoted or transfers into a position that is comparable to a position that is classified as exempt from the county civil service system. Those court employees in Los Angeles County who are eligible for this option shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission.

Item V has been modified since the issuance of the second interim report to take into consideration the constitutional prohibition on statutorily impairing contracts.<sup>77</sup> Thus, item V now provides that the implementation date on which the system in each court shall go into effect is the latest date of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date.

In addition, item V now clarifies that if the provisions of the employment protection system model are governed by an existing memorandum of understanding covering court employees, as to such provisions, the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

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<sup>77</sup> See Part VII.D, “Employment, Selection, and Advancement System.” for more information regarding the implementation date of the trial court employee personnel system.

**Recommended Employment Protection System Model**

- I. An employment protection system is legally available to the extent it is not excluded by the Constitution. To the extent that the particular employment protection system proposed by the task force is precluded by existing statutes, statutory amendments are required and shall be proposed to ensure that the trial court employment protection system becomes the minimum employment protection system for all trial courts.
- II. The trial court employment protection system shall become the minimum employment protection system for all trial court employees as of the implementation date and shall become part of the sole trial court employee personnel system. This trial court employment protection system shall replace county employment protection systems applying to trial court employees prior to the implementation date except as specified herein.
- III. Each local system shall include, but not be limited to, the following elements:
  - A. Employees may be laid off based on the organizational necessity<sup>78</sup> of the court. The local trial court shall develop personnel rules regarding procedures for layoffs. The development of these rules shall be subject to meet and confer, as applicable.
  - B. Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.<sup>79</sup>
  - C. The employee protection system shall include progressive discipline, as defined by local trial court personnel policies, procedures or plans, subject to meet and confer, as applicable.
  - D. *Employees*, as used in item III of this model, means all employees other than:
    1. Subordinate judicial officers (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639); and
    2. Managerial, confidential, temporary, limited term, and probationary<sup>80</sup> employees who may be excluded from this employment protection system in accordance with local trial

<sup>78</sup> A layoff for organizational necessity means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

<sup>79</sup> A generally accepted definition for *cause* is “A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.” (*Pugh v. Sees Candies*, 116 Cal. App. 3d 311, 330 (1981).)

<sup>80</sup> Probationary employees sometimes are referred to as introductory employees.

court personnel policies, procedures, or plans, subject to meet and confer, as applicable.

- E. This employment protection system shall not alter the fact that court employment is authorized and established by statute, and the termination of such employment shall not be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract, either implied or express.
- F. Unless modified through meet and confer or local trial court personnel policies, procedures, or plans, the procedure for any employee seeking a remedy who believes that the employing court has not complied with this employment protection system or who challenges the disciplinary decision shall be to first exhaust available administrative remedies provided by the employing court. In providing such administrative remedies, the employing court shall establish a lawful due process procedure to review disciplinary decisions that by law require a due process procedure. The lawful due process procedure shall be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.<sup>81</sup> Any impartial hearing officer required by the lawful due process procedure in an evidentiary due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable.<sup>82</sup> At a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court.

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<sup>81</sup> Under the state and federal Constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements. (See *Board of Regents v. Roth* (1972) 408 U.S. 564, 576–77; Cal. Const., art. I, § 7.) In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that at a minimum, if an employer intends to remove an employee prior to providing an evidentiary due process hearing, preremoval safeguards must include: (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials on which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. The employee is entitled to an evidentiary due process hearing, which can be given before or after the discipline or discharge is imposed. (See *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545–47.) In general, the following elements are typical in an evidentiary due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer/decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that reference the evidence.

<sup>82</sup> Options for selection that the parties may consider include, but are not limited to, a mutual strike-out system or a mutual selection system. Consideration shall be given to using an outside organization such as the American Arbitration Association or the State Mediation and Conciliation Service for submission of names of potential impartial hearing officers.

- G. The evidentiary due process hearing required by the lawful due process procedure<sup>83</sup> shall take place under state and federal standards and shall include at a minimum the following elements:
1. The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.
  2. The employee and employer shall have the right to call witnesses and present favorable evidence. The employer shall be required to release employees to testify at the hearing.
  3. The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in California Code of Civil Procedure section 1282.6.
  4. The employee has the right to representation, including legal counsel, if provided by the employee.
  5. If the hearing officer disagrees with the court's disciplinary decision, the local trial court shall furnish a copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a union or counsel, to the employee's bargaining representative or counsel, without cost.
- H. The standard of review by the trial court of the hearing officer's report and recommendation shall be as follows:
1. The court shall be bound by the factual findings of the hearing officer except factual findings that are not supported by substantial evidence.
  2. With respect to the acceptance or rejection of the hearing officer's report and recommendation, the court shall give substantial deference to the recommended disposition of the hearing officer and may not reject or modify the recommendation except pursuant to a written statement specifying the reason or reasons why the recommended disposition is rejected. Such statement of reasons shall have direct reference to the facts found and shall specify whether they are supported by substantial evidence. The court may reject the recommendation of the hearing officer if the material factual findings are not supported by substantial evidence or for the following reasons or reasons of

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<sup>83</sup> The evidentiary due process hearing required by a lawful due process procedure is sometimes referred to as a post deprivation due process hearing and may be given before or after the discipline or discharge is imposed.



substantially similar gravity or significance: (1) the recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view; (2) the recommendation requires an act contrary to law; (3) the recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view; (4) the recommendation disagrees with the court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement; (5) the recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider and/or distinguish; or (6) the recommendation, from an objective point of view and applied by the court in a good faith manner, exposes the court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

- I. The trial court's process of review of the hearing officer's report and recommendation shall be as follows: Subject to meet and confer, as applicable, trial courts shall establish in local personnel rules a process for the trial court to review the hearing officer's report and recommendation that provides at a minimum that the decision of the hearing officer shall be subject to review as described in item III.H above, save and except that such review that results in rejection or substantial modification of the recommendation of the hearing officer shall be conducted by an individual other than the disciplining officer. If such disciplining officer is a judge of the court, it shall be made by another judge of the court, a judicial committee, an individual, or a panel as specified in local personnel rules.
  1. In a court with two or fewer judges, if the court or the county has no other judge than the disciplining judge or judges, such judge or judges may conduct the review.
  2. As a minimum requirement, in those courts with ten or more judges, the review shall be by a panel of three judges whose decision shall be by a majority vote. One judge shall be selected by the presiding judge or his or her designee. One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative. The two appointed judges shall select the third judge. No judge may be selected to serve without his or her consent. The term of office of the panel shall be defined by local personnel policies, procedures, or plans, subject to meet and confer, as

applicable. No judge shall serve on the panel in a case in which he or she has imposed discipline.

- J. The time for the trial court to review the hearing officer's report and recommendation shall be as follows: The trial court shall have 30 calendar days from receipt of the decision of the hearing officer or from receipt of the record of the hearing, whichever is later, to accept or reject the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different time frame.
- K. The denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate.
- L. If the disciplined employee challenges the decision of the disciplining court rejecting or modifying the hearing officer's recommendation, the employee may file a writ of administrative mandamus under Code of Civil Procedure section 1094.5 in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure, and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the bargaining representative without charge. In reviewing the disciplining court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.
- M. In a county of the first class as defined in Government Code section 28022 as of January 1, 2000, to the extent that a court employee was a member of a county civil service system at the time of implementation of a personnel system for trial court employees, that employee will have the right to elect, as an alternative to the above described evidentiary due process hearing, to have an evidentiary due process hearing before the county civil service commission. The election to remain in the county civil service system for this purpose only shall be made not later than one year after the implementation date. Failure to elect to remain in the county civil service system for this purpose only shall result in the employee automatically being subject to the trial court employment protection system for all purposes. A court employee may not make this election after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. The election to be subject to the trial court employment protection system may not be reversed. Court

employees who initially elect to remain in the county civil service system for this purpose may elect at any time to be subject to the trial court employment protection system except after receiving notice of intended discipline as described above. Court employees who initially elect to remain in the county civil service system for this purpose who later promote or transfer into a position that is comparable to a position that is classified as exempt from the county civil service system shall be subject to the trial court employment protection system for all purposes. Court employees in the county of the first class eligible for this option shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission as described herein.

- IV. Nothing herein shall preclude the provision of enhanced employment protection systems through meet and confer or local trial court personnel policies, procedures, or plans.
- V. The implementation date on which the system in each court shall go into effect is the latest date of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of this model are governed by an existing memorandum of understanding covering court employees, as to such provisions, the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

## **D. Employment, Selection, and Advancement System**

### **Background**

The task force explored the issues of employment, selection, and advancement after the second interim report. The model discussed in this section was developed to address those issues.

Some trial court employees in approximately half of the 58 counties are covered by civil service or merit system rules that govern their employment, selection, and advancement.<sup>84</sup> These merit-based systems were established to ensure formal nondiscriminatory hiring and promotion processes based on job-related factors. In general, merit-based systems require formal selection processes to fill positions when making initial hires as well as when promoting and offering transfer opportunities to employees. These rules also typically cover the impact of position reclassification on incumbents.

Currently, some courts have two-tiered systems in which some employees within the same classification are covered by county civil service or merit systems and some employees are not. The task force has avoided recommending two-tiered systems in all aspects of the new trial court employee personnel system.

In determining its ultimate recommendations regarding employment status and the employment, selection, and advancement system, it became clear to the task force that these recommendations were inextricably linked. The position of various task force members on the issue of status depended on the recommendations regarding the employment, selection, and advancement system. Therefore, after considerable discussion among its various constituencies, the task force concluded its recommendations on status and the employment, selection, and advancement system at the same time. The decisions were made after considering all of the concerns of the respective groups and formulation of a proposal that met their concerns.

### **Education: Employment, Selection, and Advancement System**

The task force received information about the number of courts that contain trial court employees covered by county civil service and merit systems. This information was gathered from the trial courts in a telephone survey completed by task force staff.

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<sup>84</sup> Information is based on an informal telephone survey of trial courts taken in October 1999.

**Assumptions and Objectives: Employment, Selection, and Advancement System**

The task force developed assumptions and objectives as follows:

***Assumptions:***

1. State funding levels will not increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes to federal law.
3. Existing state law will require changes as a result of the implementation of the trial court employee personnel system.
4. A substantial number of trial court employees are currently covered by county civil service and merit systems rules and personnel policies that govern employment, selection, and advancement policies and procedures.

***Objectives:***

- A. Each trial court shall have authority over personnel issues, subject to meet and confer, as applicable.
- B. Trial court employees shall be covered by local employment, selection, and advancement systems that ensure nondiscriminatory hiring and promotional processes based on job-related factors.
- C. The trial court employee personnel system shall require personnel rules that provide minimum standards for the processes of hiring, promotion, and transfer and for the impact of reclassification.

**Recommended Employment, Selection, and Advancement System Model**

- I. Hiring and promotion within the trial courts shall be done in a nondiscriminatory manner based on job-related factors.
- II. Trial courts shall develop personnel rules regarding hiring, promotion, transfer, and the impact of reclassification, subject to meet and confer, as applicable, on those rules that cover matters within the scope of representation.<sup>85</sup>
- III. Trial courts shall develop personnel rules and procedures that meet the following minimum standards:
  - A. Recruiting, selecting, transferring, and advancing employees shall be on the basis of their relative ability, knowledge, and skills. Initial appointment shall be through an open, competitive process. Preference shall be given to internal candidates.
  - B. Formal job-related selection processes are required when filling positions.
  - C. Each court shall have an equal employment opportunity policy applying to all applicants and employees in accordance with applicable state and federal law.
  - D. The following positions are excluded from required competitive selection and promotion processes:
    1. Subordinate judicial officers (such as pro tem judges, commissioners, and referees).
    2. Managerial, confidential, temporary, and limited-term positions in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. Where managerial, confidential, temporary, and limited-term positions are currently defined for this purpose within the local trial court, that definition shall be maintained for purposes of establishing what is managerial, confidential, temporary, and limited term in the new personnel system subject to changes in personnel policies, procedures, or plans, subject to meet and confer, as applicable. In courts where managerial, confidential, temporary, and limited-term positions have not previously been defined for this purpose, any such designation shall be subject to meet and confer, as applicable. Permanent or regular employees who assume limited-term appointments or assignments to other positions

<sup>85</sup> This model is not intended to expand the Court Employee Labor Relations Rules definition of those matters within the scope of representation.

or classes shall retain their permanent or regular status. The exclusion of managerial, confidential, temporary, and limited-term positions from required competitive selection and promotion processes shall not affect the right of employees in those positions to representation.

- IV. The alleged misapplication, misinterpretation, or violation of the rules governing hiring, promotion, transfer, and the impact of reclassification as set forth in this model are subject to binding arbitration.
- V. The implementation date on which the system in each court shall go into effect is the latest date of the following: (1) the effective date of the legislation that enacts a personnel system for trial court employees, or (2) 90 days from the date that such legislation is chaptered. The employer and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of this model are governed by an existing memorandum of understanding covering court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.
- VI. The trial court employment, selection, and advancement system described in this model shall become the employment, selection, and advancement system for all trial court employees as of the implementation date and shall become part of the sole trial court employee personnel system. This trial court employment, selection, and advancement system shall replace any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date.

**Considerations: Employment, Selection, and Advancement System**

The task force agreed that an employment, selection, and advancement system is an integral part of a personnel structure. To ensure a fair and equitable personnel system for the trial courts and trial court employees, the task force determined that it was necessary to establish uniform minimum standards for employment, selection, and advancement applying to all trial courts in the new trial court employee personnel system. This recommended system eliminates the two-tiered system that currently exists in many courts that have grandparented county civil service or merit system status for some of their employees.

In requiring that hiring and promotion in the trial courts be done in a nondiscriminatory manner based on job-related factors, the task force established a model that requires all trial courts to develop personnel rules regarding hiring, promotion, transfer, and the impact of reclassification on incumbents. Those rules that cover matters within the scope of representation must be developed subject to meet and confer, where applicable. The task force did not intend that its model expand the definition of those matters within the scope of representation contained in the Court Employee Labor Relations Rules.

In its model, the task force established minimum standards for each trial court to use in developing its rules relating to employment, selection, and advancement. The model requires that the recruiting, selecting, transferring, and advancing of employees shall be on the basis of relative ability, knowledge, and skill. This wording in the model establishes the concept of merit in these employment decisions. The model also requires that initial appointments to positions in the trial court shall be based on an open, competitive process. Thus, individuals who have not previously held positions in the trial court must participate in a competitive selection process open to other applicants before being hired. The model also requires that qualified internal candidates participating in open, competitive selection processes be given preference over candidates from outside the trial court. For example, some systems provide for the establishment of promotional eligible lists separate from open eligible lists, giving preference to the promotional eligible list when filling vacancies; other systems add preference points to the scores of qualified promotional eligibles on open eligible lists. Any rules giving such preference must comply with state and federal employment laws.

The model requires not only that trial courts develop equal employment opportunity policies in accordance with state and federal law, but also that they establish formal job-related selection processes to determine the relative merit of applicants for vacant positions and promotional or transfer opportunities.



The task force recognized that certain positions are typically excluded from required competitive selection and promotion processes in civil service or merit systems. Accordingly, subordinate judicial officers are excluded from the selection processes described in this model. In addition, managerial, confidential, temporary, and limited-term positions may be excluded from these processes in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.

The task force was concerned that the implementation of the new trial court personnel system not result in significant changes to already existing definitions of the terms *managerial*, *confidential*, *temporary*, and *limited-term positions* contained in current civil service or merit selection systems. Therefore, the model specifies that where these terms are already defined for this purpose within a local trial court, that definition shall be maintained in the new personnel system, recognizing that these terms may be changed in the future, subject to changes in personnel policies, procedures, and plans and subject to meet and confer, as applicable. In those courts where these terms have not previously been defined for this purpose, the definitions shall be subject to meet and confer, as applicable. The task force included the words “for this purpose” because the terms *managerial* and *confidential* are often defined for purposes of exclusion from representation in labor relations, but that definition does not necessarily apply to exclusion from competitive selection processes. For example, positions that assist in developing management policies relating to labor relations are usually excluded from representation but are often included in merit system requirements. Therefore, the task force specified that only those definitions developed for purposes of exclusion from competitive selection processes should be used in defining managerial, confidential, temporary, and limited-term positions for that purpose in the new personnel system.

The task force was also concerned that permanent or regular employees who accept limited-term appointments to other classes or positions not be disadvantaged. The task force therefore specified that these employees retain their permanent or regular status. The task force also specified that employees in positions excluded from competitive selection processes should not be excluded from any right they might otherwise have to representation.

Civil service and merit systems typically have an impartial process for the binding resolution of conflicts regarding the implementation of established employment, selection, and promotion processes. The task force decided to include a recommendation that would provide a similar process for the trial court employment, selection, and advancement system. Therefore, the model provides that the alleged misapplication, misinterpretation, or violation of the local trial

court's rules governing hiring, promotion, transfer, or the impact of reclassification as set forth in the model are subject to binding arbitration.

The task force specified the implementation date of the employment, selection, and advancement system in the model consistent with other models in the new personnel system. The task force decided that the new personnel system should be implemented as soon as possible after the effective date of the legislation that creates the system. Therefore, the task force recommended that the effective date be either the effective date of the legislation or 90 days after the legislation is chaptered, whichever is later. Since the legislation may not be chaptered until late in the year, and since some portions of the trial court employment, selection, and advancement system are subject to meet and confer, the task force wanted to provide at least a 90-day period for that process to occur. Representatives of the court and of recognized employee organizations may mutually agree to a different effective date. However, the Constitution prevents legislation from impairing existing contracts. Therefore, the task force added a separate implementation date where memoranda of understanding are in effect that contain aspects of the employment, selection, and advancement system.

The task force has included in this model a provision that if aspects of the employment, selection, and advancement system are contained in memoranda of understanding existing on the effective date of the new personnel system, then the implementation date for this model will be the date a successor memorandum of understanding is effective. To ensure that an impasse would not prevent the implementation of the new system, the task force decided that if there is no agreement reached for a successor memorandum of understanding, the trial court employment, selection, and advancement system must be implemented 90 days from the date of expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

The final provision in the model clarifies the task force's intention that the implementation of the trial court employment, selection, and advancement system described in the model replaces any existing aspects of county employment, selection, and advancement systems applying to trial court employees.

Some courts, by contract or memoranda of understanding, have existing employment, selection, and advancement systems that offer less protection than that contained in this model. The task force encourages courts and recognized employee representatives to work together to implement the new trial court employment, selection, and advancement system as soon as possible following the

effective date of the legislation implementing the new trial court employee personnel system.

**Impact: Employment, Selection and Advancement System Model**

Since this model was adopted by the task force in conjunction with its decision to recommend court employment status, it was designed under the assumption of local trial court employment status.

This model establishes minimum standards for an employment, selection, and advancement system based on merit to be implemented in each local court through the adoption of local personnel rules. Those courts that do not have existing court personnel rules that meet the standards set forth in the model will be required to adopt rules that comply with the model. The adoption of personnel rules that address subjects within the scope of representation under the Court Employee Labor Relations Rules will be subject to meet and confer, where applicable.

The model establishes that the trial court employment, selection, and advancement system is separate from any equivalent county system. Each local trial court will be responsible for developing and administering its own system. The model does not preclude courts from seeking assistance from vendors or counties or other courts in administering their systems.

This model ensures that employees in all trial courts will have the protections inherent in selection and promotion processes set forth in local court rules that are formal, nondiscriminatory, job-related, and competitive. The model also ensures that failure to provide employees with processes that meet these requirements are adjudicated by an impartial arbitrator.

## **E. Personnel File Access**

### **Background**

The task force explored the issues of personnel file access after publication of the second interim report. The model discussed in this section was developed to address those issues.

The task force recognized that employers typically have policies and procedures that govern employee access to their own personnel files. For example, California Labor Code section 1198.5 applies to private sector employers and governs employees' access to their personnel files. The task force agreed that courts also should have policies and procedures governing employee access to their personnel files. Therefore, the task force adopted the personnel file access model, which parallels the provisions of Labor Code section 1198.5.

### **Objectives: Personnel File Access**

Although the task force did not formally adopt assumptions and objectives for this model, the following objective supports the need for the model. The task force agreed to develop personnel rules, subject to meet and confer, as applicable, to provide trial court employees with access to their official personnel files.

<b>Recommended Personnel File Access Model</b>
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The trial courts shall adopt personnel rules, subject to meet and confer, as applicable, to provide trial court employees with access to their official personnel files. The rules shall provide at a minimum that:

- I. Trial courts shall at reasonable times and at reasonable intervals, upon the request of an employee, permit the employee to inspect his or her personnel files that are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary actions.
- II. Trial courts shall keep a copy of each employee's official personnel file at the place where the employee reports to work, or shall make the official personnel file available at such place within a reasonable period of time after a request therefore by the employee.
- III. Records of an employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory, or common law provisions shall be excluded from inspection.

**Considerations: Personnel File Access**

Task force members agreed that it was important to establish minimum standards for each trial court to use in developing personnel rules related to employee access to their own official personnel files. The task force agreed that the personnel rules to be adopted by the courts would be subject to meet and confer, as applicable.

The minimum standards adopted by the task force require the following. At reasonable times and reasonable intervals, and upon request by an employee, trial courts shall make available for inspection by the employee documents used to make determinations regarding the employee's qualifications for promotion, additional compensation, or termination and other disciplinary actions. The task force's recommendation also states that trial courts shall keep a copy of each employee's official personnel file at the place where the employee reports to work, or shall make such files available at such place within a reasonable period of time after a request from an employee to see his or her personnel file.

Materials or records of an employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory and common law provisions will be excluded from inspection by the employee. These exclusions parallel those provided in Labor Code section 1198.5 and recognize that others (such as those providing a letter of reference) may have a privacy interest in preventing the disclosure of particular information to the employee.

**Impact: Personnel File Access Model**

The recommended personnel file access model would work the same under any employment status option, and the impact for any of the status options is generally the same. Under this model, the local court would be responsible for permitting employees to inspect their personnel files at reasonable times and at reasonable intervals upon request by an employee.

## **F. Defined-Benefit Retirement Plan**

### **Background**

Defined-benefit retirement plans are those retirement plans with specific benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law. Defined-contribution retirement plans require a specific level of contribution but do not provide a specific benefit. This section focuses on defined-benefit retirement plans only; defined-contribution plans are discussed in the deferred compensation assumptions, objectives, and model in this report, in Part VII.G.

The task force recommends protecting the vested retirement benefits of current court employees in county defined-benefit retirement plans and ensuring that employees do not lose the benefits and expectations they currently enjoy when they transition to the new personnel system.

Trial court employees are currently members of county defined-benefit retirement systems that vary greatly from county to county. These retirement systems include 1937 Act, Public Employees' Retirement System (CalPERS), and other public retirement systems. Not only do the benefits offered by the local systems vary, but some counties are covered by social security and others are not. Developing a retirement model that does not affect the benefits of current employees and does not affect social security contributions required particular attention.

The task force initially addressed only current trial court employees. Current employees are defined as those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system. Assumptions, objectives, and a model for defined-benefit retirement plans for current employees were included in the first interim report of the task force. Since then, the task force also addressed employees hired after implementation of the new personnel system. The task force was opposed to a two-tiered retirement system that treated future employees differently from current employees and decided that future employees should be provided the same retirement system as current employees. The recommendations of the task force regarding future employees have been incorporated into the revised assumptions, objectives, and model in this section.

### **Education: Defined-Benefit Retirement Plan**

The task force first received education regarding retirement systems in general. Representatives from the California Public Employees Retirement System (CalPERS) provided general education about retirement systems and about CalPERS in particular. Also, task force member Mr. Robert Walton, Assistant Executive Officer, Governmental Affairs, and Mr. David Christianson, Legislative Manager,

Governmental Affairs, from CalPERS, provided expert advice. Contract actuarial consultant Mr. Drew James of William M. Mercer, Inc., responded to questions about current county retirement systems. As a result of this education, the task force determined that it needed answers to specific questions before pursuing assumptions, objectives, and a model for retirement systems. Some examples of the questions raised by the task force are:

- Is there a way to design a system that would allow court employees to maintain their current benefits regardless of employment status?
- If individual courts were to choose to be independent employers, with their own retirement systems, how could administrative costs be minimized for small courts?
- Could some court employees within a court elect to remain in their county retirement plan while other court employees in the same court choose a newly created plan?
- If current employees were to remain in county retirement systems while any new employees became members of a newly created system, what effect would this have on social security coverage?

These and other specific questions were drafted and sent to CalPERS and Mercer. The task force reviewed responses received from both entities.

The task force reviewed the statutes governing the conversion of employees from county employment to independent employment within the newly created County Offices of Education.<sup>86</sup> In that case, employees were allowed to choose to join the State Employee Retirement System or to remain in their county retirement systems. The decisions, once made, could not be rescinded. For those employees remaining in the county system, the same appropriations and transfers of funds were made to the retirement fund as required of the county under the county retirement law.

The task force also received education from Ms. Deborah Brown, staff attorney to the task force, regarding options for retaining the current social security contribution or noncontribution status for trial court employees. Additionally, the task force received education regarding the state judicial branch retirement system and regarding the social security system.

### **Assumptions and Objectives: Defined-Benefit Retirement Plan**

The task force subsequently developed assumptions and objectives as follows:

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<sup>86</sup> Educ. Code, § 1312–1313.



***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court personnel system.
2. The trial courts will exist as public agencies with the ability to contract for retirement benefits within the scope of the defined-benefit system.
3. The model assumes no changes in current federal law.
4. Existing state law regarding retirement provisions may require changes as a result of implementation of the trial court personnel system.
5. There will be no substantial financial impact on retirement systems and employee/employer contributions as a result of the implementation of the trial court personnel system.
6. Any successor retirement system will be a defined-benefit system. (This model will not address defined-contribution plans, which the task force will address separately.)
7. Any successor system will not assume any of the liabilities or assets of county retirement systems.
8. Social security is a tax. Whether an employee pays social security is determined by a variety of factors, including the employer's agreement with the social security administration.
9. For trial court employees in county retirement systems, the county is responsible for determining any plan design changes in the level of retirement benefits. The employer shall have the authority to determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.
10. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court, counties are not obligated to meet and confer with trial court employees' bargaining units regarding defined-benefit retirement plans.

***Objectives:***

- A. The retirement model will apply to current and future trial court employees.
- B. The level of retirement benefits of trial court employees will not be reduced as a result of the implementation of the trial court personnel system.
- C. If trial court employees become state or court employees, the trial court employees will have the right to continue to receive the same retirement plan design benefits as county employees.
- D. The employer shall determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.
- E. The vested rights accrued by employees under their current retirement systems will be protected.

- F. Any successor defined-benefit system will provide for reciprocity with current county defined-benefit systems.
- G. To the extent permitted by law, social security contributions or noncontributions under current county retirement systems will not be modified by implementation of the trial court personnel system.
- H. To facilitate trial court employee participation in county defined-benefit retirement plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how defined-benefit retirement would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

<b>Preliminary Defined-Benefit Retirement Plan Model</b>
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- I. If trial court employees become court or state employees, trial court employees will have the right to continue to receive the same retirement plan design benefits as county employees without the opportunity to meet and confer with the counties as to those benefits. Regardless of employment status, trial court employees will be eligible to participate in county defined-benefit retirement systems<sup>87</sup> and will be subject to county defined-benefit retirement system regulations and policies.
- II. For trial court employees who are members of a county retirement system, the same rate of contribution shall be paid by the state or court, as the case may be, to the county retirement system for each employee as the rate of contribution required of the county under the county retirement system.
- III. To the extent permitted by law, social security contributions or noncontributions of trial court employees will not be modified by implementation of the trial court personnel system.
- IV. To facilitate court employee participation in county defined-benefit retirement plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- V. The model does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan or, if trial court employees become state employees, a state defined-benefit retirement plan.

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<sup>87</sup> *County retirement systems* in this model means 1937 Act, CalPERS, or independent retirement systems or plans.

**Preliminary Considerations: Defined-Benefit Retirement Plan**

As mentioned earlier, the preliminary defined-retirement benefit plan model contained language for all three status options: state, court, and county. To provide insight into the impact of the model under various employment status options as contemplated by the task force, the considerations for each possibility are included in the discussion below.

The preliminary model recognized that, regardless of employment status, both current and future trial court employees will be eligible to participate in county retirement systems. However, since these county retirement systems are designed by the county and subject to meet and confer with county employees, if trial court employees are not county employees, they will not be in a position to meet and confer over plan benefits. They may, however meet and confer with the court over the level of employee contribution toward those benefits. The model ensured that the state or court will pay to the county retirement system the same rate of contribution per employee as the county pays for its employees. The model made it clear that neither a new statewide plan nor development of new local retirement plans was precluded by the model.

This preliminary model ensured that, regardless of the employment status ultimately adopted, the retirement benefits of current employees were protected. This protection will require legislation similar to the statutes relating to the retirement status of employees of the County Offices of Education during their employment status transition. The California State Association of Counties had informed the task force that it would support the provision to allow trial court employees to participate in county defined-benefit retirement systems

This model will not increase current court, county, or state costs since current trial court employees are already in the county retirement systems. The cost impact of developing a new retirement system and allowing trial court employees a choice of retirement systems cannot be addressed until the actuarial calculations based on the results of the survey of trial court employees have been analyzed.

**Impact of Preliminary Model Under Each Employment Status Option**

The task force also considered the impact of trial court employees' participation in county retirement plans under each employment status option. These effects are shown in Exhibit VII-1, at the end of this section.

The impact of trial court employees' participation in county retirement plans would be the same under the state and court employment status options. The court, and ultimately the state, contribute to the county retirement system the total cost for each employee in the county retirement plan, including the employer contributions set by

the retirement system, the member (employee) contributions, and the bargained employer-paid member contributions. The state or court deducts the member contribution from the employee's paycheck. The percentage of the employee contribution paid by the employer is subject to bargaining. Employees would receive the defined-benefit plan bargained by county employees. Employees also may have a future option to join a new defined-benefit retirement plan that may be developed subject to meet and confer.

In the preliminary model under the county employment status option, all court employees would participate in their local county retirement plans. The state or court would reimburse the county for the total cost for each employee, including the employer contribution, the member (employee) contribution, and any bargained employer-paid member contribution. The percentage of the employee contribution paid by the county would be subject to bargaining. The county would determine retirement plan benefits through local personnel policies and meet and confer processes, where applicable. The state or court would be required to fund the level of benefits established by the county.

As noted earlier, any analysis of the cost consequences of allowing current employees a choice of retirement systems has been postponed until the actuarial calculations based on results of the trial court employee survey have been analyzed.

In determining the impact of its proposed retirement model on current employees under each of the status options, a major consideration was whether or not employees would be covered by social security. The task force did not want its decisions to affect the current coverage levels. Currently, 10 courts are not covered by social security, and their employees do not contribute to social security. The task force's recommendation to allow all trial court employees to continue to participate in county retirement plans ensures that existing social security coverage will not be affected. If, in the future, new local or statewide retirement systems are developed subject to meet and confer, their impact on social security coverage should be considered prior to implementation.

#### **Additional Considerations and the Recommended Defined-Benefit Retirement Plan Model**

As a result of further deliberations by the task force and the selection of court as the employment status for trial court employees, the task force made modifications to the preliminary defined-benefit retirement plan model by eliminating all references to county or state employment status.

Mr. Drew James, an actuarial consultant with William M. Mercer, Inc., presented the task force with a preliminary actuarial analysis based on preliminary trial court employee survey data that is in the final stages of verification. The preliminary analysis evaluated the financial implications of the task force's defined-benefit retirement plan model and the benefit costs associated with any change in retirement benefits. The findings indicated that creating a new defined-benefit retirement plan option generally would result in a plan that is more costly than the existing system. The task force's recommended defined-benefit retirement plan model minimizes current court costs and does not add significantly to long-term costs. The complete final actuarial analysis will be published separately at a later date in an addendum to this final report.

<b>Recommended Defined-Benefit Retirement Plan Model</b>
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- I. Trial court employees will be eligible to participate in county defined-benefit retirement systems<sup>88</sup> and will be subject to county defined-benefit retirement system regulations and policies. Trial court employees will have the right to continue to receive the same retirement plan benefits as county employees without the opportunity to meet and confer with the counties as to those benefits.
- II. For trial court employees who are members of a county retirement system, the same rate of contribution shall be paid by the court to the county retirement system for each employee as the rate of contribution required of the county under the county retirement system.
- III. To the extent permitted by law, social security contributions or noncontributions of trial court employees will not be modified by implementation of the trial court personnel system.
- IV. To facilitate court employee participation in county defined-benefit retirement plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- V. The model does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan.

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<sup>88</sup> *County retirement systems* in this model means 1937 Act, CalPERS, or independent retirement systems or plans.

**Exhibit VII-1**  
**Working Impact of Trial Court Employees' Participation in**  
**County Defined-Benefit Plans**

	Employment Status	
	STATE/COURT	COUNTY
<b>Employer Contribution<sup>89</sup></b>	- State/court pays the same employer contribution amount the retirement system requires the county to pay.	- Court pays the same employer contribution amount the retirement system requires the county to pay.
<b>Member (Employee) Contribution<sup>90</sup></b>	- State/court deducts employee contribution from paycheck. - State/court transfers funds to county retirement system.	- County deducts employee contribution from paycheck. - County transfers funds to county retirement system.
<b>Employer-Paid Member (Employee) Contributions<sup>91</sup></b>	- Bargainable. - State/court pays any employer-paid member contributions to county retirement system.	- Bargainable. - Court pays any employer-paid member contributions to county retirement system.
<b>Plan Benefits</b>	- Shall be the same retirement benefits as provided to county employees.	- Shall be the same retirement benefits as provided to county employees.
<b>Bargaining Defined-Benefit Plan<sup>92</sup></b>	- Employees shall receive the defined-benefit plan bargained by county employees with the county. <sup>93</sup>	- Employees shall receive the defined-benefit plan bargained with the county.

<sup>89</sup> The amount an employer contributes to the plan.

<sup>90</sup> The amount an employee contributes to a plan on his or her behalf; contributions are generally made through a payroll deduction.

<sup>91</sup> Employees' contributions paid for by the employer.

<sup>92</sup> A retirement plan with benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law.

<sup>93</sup> This does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan that may be developed subject to meet and confer.



## G. Accrued Leave Benefits

### Background

The term *accrued leave benefits* as defined here may include (1) accrual rates (how much leave time an employee earns in a given time period), (2) leave type (for example, vacation, sick leave, compensatory time off), and (3) the vested accrued leave benefits held by trial court employees. The task force has attempted to preserve employees' accrued leave benefits and to ensure that trial court employees maintain any rights related to accrued leave benefits, such as the ability to carry leave over from one year to another, to exchange leave credits for cash at the end of the year, and/or to apply leave credit to other benefits, including retirement and deferred compensation.

### Definition, Assumptions, and Objectives: Accrued Leave Benefits

In developing its accrued leave model, the task force used the following definition, assumptions, and objectives:

#### **Definition:**

*Accrued leave benefits* refer to leave time earned by trial court employees, such as vacation, sick leave, annual leave, personal holidays, and compensatory time off, which may have a cash-out value, may be carried over from one year to another, and/or may be applied to other benefits, including retirement and deferred compensation.<sup>94</sup> When the term *accrued leave benefits* is used in the assumptions, objectives, and model, it may include accrual rates, leave type (for example, vacation, sick leave, compensatory time off), and the vested accrued leave benefits held by trial court employees.

#### **Assumptions:**

1. Accrued annual leave, sick leave, compensatory time off, and vacation time are unfunded liabilities when they are carried over from one year to the next.
2. Determination of liability for leave balances accrued by court employees before implementation of the trial court employee personnel system is a policy issue that is outside the scope of the task force's charge.
3. Employees may or may not receive cash for accrued leave and compensatory time off according to local personnel policies, procedures, and plans subject to memoranda of understanding in effect, where applicable.
4. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
5. The model assumes no changes to federal law.

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<sup>94</sup> For example, employees may be able to count unused sick leave as service credit for purposes of retirement or to convert unused leave credits to a contribution into a deferred compensation plan.

6. Existing state law will require changes as a result of the implementation of the trial court employee personnel system.

***Objectives:***

- A. The type and rate of accrued leave benefits, as well as policies related to accrued leave<sup>95</sup> in effect on the date of implementation, will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. Trial court employees will retain their vested accrued leave benefits upon implementation of the trial court employee personnel system.
- C. Implementation of the trial court employee personnel system will not force a cash-out liability for the court or the county.
- D. Upon implementation of the trial court employee personnel system, while existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same accrued leave benefits as provided under the memoranda of understanding.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how accrued leave benefits would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

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<sup>95</sup> Policies relating to accrued leave may include policies governing opportunities for employees to exchange unused leave credits for cash, carry over unused leave credits from one year to the next, and apply unused leave credits to other benefit programs.

<b>Preliminary Accrued Leave Benefits Model</b>
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Upon implementation of the trial court employee personnel system:

- I. The type and rate of accrued leave benefits, as well as policies related to accrued leave in effect on the date of implementation, will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. Regardless of the employment status of trial court employees, employees will retain their vested accrued leave benefits upon implementation of the trial court employee personnel system. Employees may not cash out their accrued leave balances solely as a result of implementation of the trial court employee personnel system.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same type and accrual rate of, as well as policies relating to, accrued leave benefits as provided in the memoranda of understanding.
- IV. The type and accrual rate of, as well as policies relating to, accrued leave benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or revision of existing personnel policies, procedures, or plans.
- V. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court employment, neither the court nor the county will be forced to cash out trial court employees' accrued leave balances.

**Preliminary Considerations: Accrued Leave Benefits**

In creating its model, the task force sought to preserve employees' accrued leave benefits and to ensure that trial court employees maintain any rights related to accrued leave benefits. The preliminary benefits model contained language for the three status options: state, court, and county. To provide insight into the impact of the model under various options as contemplated by the task force, the considerations for each possibility are included in the discussion below.

The model upholds the goal that, as a result of the implementation of the new trial court employee personnel system, trial court employees will experience no reduction in accrued leave benefits. The model also states that any accrued leave rights that trial court employees currently enjoy, as defined in existing accrued leave policies, will not be diminished as a result of implementation of the new personnel system.

Regardless of their employment status, trial court employees will keep their vested accrued leave benefits when the trial court employee personnel system goes into effect. At the time of transition, employees will not have the option of exchanging their accrued leave credits for cash simply because their employment status changed. If, as a result of the implementation of the trial court employee personnel system, trial court employees' employment status were state or court, neither the county nor the court would be forced to cash out trial court employees' accrued leave balances. In other words, if trial court employees were, for example, to change their employment status from county to court, these employees would carry over the full amount of their accrued leave benefits to the new employer.

Employees who are covered by memoranda of understanding will continue to receive their accrued leave benefits while memoranda of understanding remain in effect, with type and rate remaining the same. Any accrued leave policies referenced in the memoranda of understanding will also continue to apply while these memoranda of understanding remain in effect.

Accrued leave benefits, as well as policies relating to these benefits, may be modified through the usual channels: that is, through the meet and confer process or through changes to existing personnel policies, procedures, or plans.

It remains to be determined which entity, the court or the county, will ultimately be responsible for funding any leave benefits accrued by trial court employees prior to the implementation of the trial court employee personnel system. In some counties, courts have already assumed fiscal responsibility for these carried-over accrued leave benefits. The issue of fiscal responsibility for leave benefits accumulated prior to transitioning to a new personnel system is a policy question that is outside the purview of the task force.

**Impact of Preliminary Model Under Each Employment Status Option**

The accrued leave model is applicable equally under each employment status option. No matter what the employment status option—state, court, county, or other—trial court employees will experience no change in the type and accrual rate of their accrued leave benefits as a result of the implementation of the trial court employee personnel system.

Each employment status option does, however, require that different transition issues be addressed to ensure a smooth implementation of the model. For example, under state or court employment status, the court would need a mechanism for tracking trial court employees' accrued leave balances previously monitored by the county. If trial court employees' employment status were to be county, the counties would have to contend with the fact that some courts in their counties grant accrued leave benefits that differ from those granted by other county departments.

Whatever the transition issues, it is the goal of the task force to ensure that trial court employees' accrued leave benefits and related rights are not reduced as a result of implementation of the new trial court employee personnel system.

**Additional Considerations and the Recommended Accrued Leave Benefits Model**

Following the issuance of the second interim report, the task force modified the accrued leave benefits model in three respects. First, language was added to item I of the model to clarify that policies related to accrued leave in effect on the date of implementation would remain in effect until modified pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or revision of existing personnel policies, procedures, or plans. For example, a policy may provide for accrual of six hours of vacation during each pay period; however, this time may be used only after the first 90 days of employment. Under this policy, if an employee has worked only 30 days at the time the new personnel system is implemented, the employee would need to work 60 more days before being able to use that accrued vacation time. Second, the recommended model included language to clarify that

the implementation of the trial court employee personnel system will not be considered to cause a termination of employment and rehire for purposes of accrued leave. Finally, changes were made to eliminate all references to county or state employment status for the recommended model.

<b>Recommended Accrued Leave Benefits Model</b>
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Upon implementation of the trial court employee personnel system:

- I. The type and rate of accrued leave benefits will not be reduced as a result of the implementation of the trial court employee personnel system. Policies related to accrued leave in effect on the date of implementation remain in effect until modified pursuant to item IV.
- II. The implementation of the trial court employee personnel system will not be considered to cause a termination and rehire of employment for purposes of accrued leave. Employees will retain their accrued leave balances upon implementation of the trial court employee personnel system. Employees may not cash out their accrued leave balances solely as a result of implementation of the trial court employee personnel system.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same type and accrual rate of, as well as policies relating to, accrued leave benefits as provided in the memoranda of understanding.
- IV. The type and accrual rate of, as well as policies relating to, accrued leave benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or revision of existing personnel policies, procedures, or plans.
- V. The implementation of the trial court employee personnel system will not force either the court or the county to cash out trial court employees' accrued leave balances.

## **H. Benefits: Group Insurance and Other Employer-Provided Benefits**

### **Background**

The task force intends that trial court employees not lose the benefits they currently enjoy when they transition to the new personnel system. The task force recognizes that protecting benefits for trial court employees was crucial to meeting its charge that trial court employees' benefits should not be reduced.<sup>96</sup>

Trial court employees are offered a wide variety of benefits. With 58 different county systems, trial court systems vary greatly. The task force conducted a survey that requested information about trial court employees' benefits. The task force used information obtained from the survey in developing this model. Analysis of the survey data is still ongoing.

This model addresses the group insurance and other employer-provided benefits of current employees. It does not address other conditions of employment that have been addressed in the salary, classification, meet and confer, employment protection system, retirement, federally regulated benefits, deferred compensation, accrued leave, and transition models. Current employees are defined as those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system. (See Part III for a complete definition of trial court employee.)

The task force developed this model with the intent to protect trial court employees' benefits. A particular thoroughness was required by the task force to create a model that would maintain stability of benefits for trial court employees during the transition to a new personnel system.

### **Education: Group Insurance and Other Employer-Provided Benefits**

The task force received education from Ms. Judith A. Myers, staff to the task force, regarding group insurance benefits and other employer-provided benefits applicable to trial court employees. Mr. Gregg Kenney, manager in the Health Benefits Service Division of the California Public Employees' Retirement System (CalPERS), provided education on other benefit systems associated with state and local government employees and considerations and ramifications of plan design. Ms. Deborah Brown, staff attorney to the task force, provided education on the legal issues relating to group insurance and other employer-provided benefits.

### **Definition, Assumptions, and Objectives: Group Insurance and Other Employer-Provided Benefits**

The task force used the following definitions, assumptions, and objectives in developing a recommended model for benefits:

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<sup>96</sup> Gov. Code, § 77605(d).



***Definitions:******Group Insurance Benefits***

The term *group insurance benefits* means insurance benefits that employers offer to employees, such as medical, dental, vision, disability, legal, life insurance, and other like benefits. Employers may obtain group insurance benefits through vendors or provide group insurance benefits directly through a self-insurance program. The *level of benefits* refers to the benefits received by employees under plan provisions, including co-payment levels and employee contributions.

***Other Employer-Provided Benefits***

The term *other employer-provided benefits* is defined as benefits provided by the employer, the cost of which may or may not be covered by the employer, excluding group insurance benefits (defined above), deferred compensation, and accrued leave benefits. Deferred compensation and accrued leave benefits are addressed separately. Other employer-provided benefits may be provided directly by the employer or through a third-party vendor. These benefits may include, but are not limited to, bus tokens, parking, transit passes, tuition reimbursement, car allowances, and so on.

***Benefits***

The term *benefits* as used here does not refer to other conditions of employment that have been addressed in the salary, classification, meet and confer, employment protection system, retirement, federally regulated benefits, deferred compensation, accrued leave, and transition models.

***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes in current federal law.
3. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.
4. Benefits vendors are independent entities and may or may not be legally required to provide benefits to trial court employees, depending on trial court employees' employment status.

***Objectives:***

- A. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level<sup>97</sup> of benefits as provided under the memoranda of understanding.

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<sup>97</sup> *Same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means a comparable level of benefits.

- C. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees:
- 1) Provide for a transition period for all unrepresented trial court employees who are receiving benefits from one entity (county or court) to continue to receive benefits from the same entity;
  - 2) Provide a transition period to transfer responsibility for administration of benefits to the new employer;
  - 3) The successor employer shall provide, to the extent permitted by law, trial court employees with the same or comparable benefits; and
  - 4) The court and the county may mutually agree that the county will administer the payroll for trial court employees to facilitate court employee participation in county benefit plans, for which trial court employees may be eligible.

### **Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how benefits would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

<b>Preliminary Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court employment, while existing memoranda of understanding remain in effect or for a period of 24 months, whichever is longer, represented trial court employees shall continue to receive the same level<sup>98</sup> of benefits as provided under the memoranda of understanding unless there is a mutual agreement to a change.
- III. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is county employment, while existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of benefits as provided under the memoranda of understanding. Benefits are subject to modification pursuant to the terms of memoranda of understanding or upon expiration of existing memoranda of understanding, subject to meet and confer.
- IV. Regardless of the employment status of trial court employees, unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.
- V. If there is a change in responsibility for administering<sup>99</sup> benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in their benefit plans regardless of the employment status of trial court employees, as permitted by law or vendor.
- VI. The court or state, as the case may be, will reimburse the county for the cost of coverage of trial court employees in county benefit plans.

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<sup>98</sup> For the purpose of this model, *same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means a comparable level of benefits.

<sup>99</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

- VII. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *county* employment, the following provisions govern which entity will be responsible for administering the benefits:
- A. At the time of implementation of the trial court employee personnel system, if the county administers benefits, or if the court contracts with the county to administer benefits, the county shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
  - B. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the following provisions govern the transition of responsibility for administration of these benefits to the county:
    - 1. While existing memoranda of understanding remain in effect<sup>100</sup> or for a period of up to 24 months, whichever is longer, courts will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the county that it no longer needs the court to administer specified benefits or the county and the court mutually agree that the court will no longer administer specified benefits.
    - 2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the courts will administer unrepresented trial court employees' benefits unless notified by the county that it no longer needs the court to administer specified benefits or the county and the court mutually agree that the court will no longer administer specified benefits. During this 24-month transition period, if the court intends to change the benefits for unrepresented trial court employees, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the county can decide whether to accept the court's change in benefits or consider alternatives to provide benefits on its own.
    - 3. If, during the 24-month transition period, the county decides to offer particular benefits that are different from what the court is administering, then the county will be responsible for administering those particular benefits.<sup>101</sup>
    - 4. If the county intends to give notice to the court that it no longer needs the court to provide specified benefits, the county shall

<sup>100</sup> For the purpose of this model, an existing memorandum of understanding shall remain in effect until, pursuant to the meet and confer process, the parties adopt a successor memorandum of understanding or until the parties reach an impasse and, pursuant to the meet and confer process and local procedures regarding impasse, the level of benefits is modified.

<sup>101</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

provide the court with at least 60 days' notice, or a mutually agreed to amount of notice.

- VIII. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *state or court* employment, the following provisions govern which entity will be responsible for administering the benefits:
- A. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
  - B. At the time of implementation of the trial court employee personnel system, if the county administers benefits or the court contracts with the county to administer benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:
    - 1. While existing memoranda of understanding remain in effect or for a period of up to 24 months, whichever is longer, counties will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the trial court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.
    - 2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer unrepresented trial court employees' benefits unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.
    - 3. If, during the 24-month transition period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits.<sup>102</sup>

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<sup>102</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

4. If the court intends to give notice to the county that it no longer needs the county to administer specified benefits, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.
    - C. The court and the county may mutually agree that the county will administer the payroll for trial court employees to facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible.
- IX. This model does not exclude the possibility that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.

**Preliminary Considerations: Group Insurance and Other Employer-Provided Benefits**

In developing the benefits model, the task force recognized the importance of addressing two major concerns. The first concern is ensuring the stability and protection of benefits for trial court employees upon transition. The second is recognizing the need to have a transition period that provides sufficient time for the successor employer to investigate and negotiate with third-party vendors or providers of new benefit programs and also provides sufficient time for the transfer of administrative responsibility.

As mentioned earlier, the preliminary benefits model contained language for all three status options: state, court, and county. To provide insight into the impact of the model under various options as contemplated by the task force, the considerations for each possibility are included in the discussion below.

The model ensures that, regardless of the employment status ultimately adopted, the benefits of current employees will not be reduced as a result of implementation of the trial court employee personnel system.

The text of the preliminary model provides that if trial court employees' status were state or court, represented employees would continue to receive the same level of benefits as provided under the memoranda of understanding for the length of the memoranda of understanding or for a period of 24 months, whichever is longer, unless there is mutual agreement between recognized employee representatives and the court to change the level of benefits.

The preliminary model states that if trial court employees' status were county, while existing memoranda of understanding remain in effect, represented employees would continue to receive the same level of benefits as provided by the memoranda of understanding. The benefits would be subject to change upon expiration of existing memoranda of understanding or pursuant to the terms of memoranda of understanding.

Regardless of the employment status, unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.

The benefits model presents more complicated administrative issues than other models recommended by the task force. This is so because the Trial Court Funding Act provided in Section 77212 that, beginning on July 1, 1998, the county may give the court notice that it will no longer furnish a specific service, or the court may give notice to the county that the court will no longer use a specific county service. The task force had to consider different scenarios for the administration of benefits that may be in place in different courts before the implementation of the trial court employee

personnel system. Section 77212 of the Trial Court Funding Act provides that this severance of county services may occur as early as the first day of the succeeding fiscal year. If the court or the county exercises this option, it is possible that by the time a new personnel structure is implemented, the county may have transferred responsibility to the court for the administration of specific benefits.

The model addresses this issue by defining how benefits will be administered if either the court or the county is administering benefits at the time the trial court personnel structure is implemented. Item VII in the preliminary model addresses the situation in which, at the time of implementation of the trial court employee personnel system, trial court employees' status is *county*. Item VIII of the preliminary model addresses the situation in which, at the time of implementation, trial court employees' status is *court* or *state*.

Within this framework (in items VII and VIII), the preliminary model provides that the same entity will continue to administer benefits for 24 months or for the length of the memorandum of understanding. The purpose of this provision is to accommodate a smooth transition of administration of benefits if the responsibility for administration were transferred from one entity to another due to trial court employees' ultimate status. The terms *administering*, *administration of*, and *administers*, as used in the model, mean that the entity contracts with a vendor or otherwise makes available particular benefits. These terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

Item VII of the preliminary model addresses what would happen administratively if court employees' ultimate status were *county* employment. Item VII.A provides that, if the county administers benefits, or if the court contracts with the county to administer benefits, the benefits will continue to be administered by the county as provided under the existing personnel policies, procedures, and plans or trial court employee memoranda of understanding.

Item VII.B.1 provides that, if at the time of implementation of the trial court employee personnel system, the court administers benefits separately from the county, then the court will administer represented trial court employees' benefits for the length of the existing memoranda of understanding or for a period of up to 24 months, whichever is longer. This administrative responsibility could end earlier if the county notifies the court that it no longer needs the court to administer benefits or if the county and the court mutually agree that the court will no longer administer benefits.



Item VII.B.2 provides for a 24-month transition period after the implementation of the trial court employee personnel system. During this 24-month period, the courts will administer unrepresented trial court employees' benefits, unless the court is notified by the county that it no longer needs the court to administer the benefits or there is mutual agreement that the court will no longer administer the benefits. This item also provides that, if the court intends to change the benefits for unrepresented trial court employees, the court must provide the county with at least 60 days' notice, or a mutually agreed to amount of notice, before the implementation of any change. This 60-day notice will allow time for the county to decide whether to accept the court's proposed change or to consider alternatives to provide benefits on its own.

Item VII.B.3 provides that if, during this 24-month transition period, the county decides to offer benefits that are different from what the court is administering, the county will be responsible for administering those benefits.

Item VII.B.4 states that the county must provide the court with at least 60 days' notice, or a mutually agreed amount of notice, if the county intends to give the court notice that it no longer needs the court to provide specified benefits.

Item VIII of the preliminary model addresses what will happen administratively if court employees' ultimate status is *court* or *state* employment. Item VIII.A provides that if, at the time of implementation of the trial court employee personnel system, the court administers benefits separately from the county, the court will continue to administer the benefits as provided under the existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.

If, at the time of implementation of the trial court employee personnel system, the county administers benefits or the court contracts with the county to administer the benefits, the county will administer the represented trial court employees' benefits for the length of the existing memoranda of understanding or for a period of up to 24 months, whichever is longer. This administrative responsibility could end earlier if the court notifies the county that it no longer needs the county to administer benefits or if the court and the county mutually agree that benefits will no longer be administered by the county.

Item VIII.B.2 provides for a 24-month transition period after implementation of the trial court employee personnel system. During this 24-month period, the county will administer unrepresented trial court employees' benefits, unless the county is notified by the court that it no longer needs the county to administer the benefits or there is mutual agreement that the county will no longer administer the benefits. This item also provides that, if the county intends to change the benefits for unrepresented trial court

employees during this 24-month transition period, the county will provide at least 60 days' notice, or a mutually agreed to amount of notice, before any change is implemented. This 60 days' notice will allow time for the court to decide whether to accept the county's change or to consider alternatives to provide benefits on its own.

Item VIII.B.3 states that, if the court decides to offer different benefits from what the county is administering, then the court will be responsible for administering those benefits.

Item VIII.C. provides that a court and the county may mutually agree that the county will administer the payroll system for trial court employees to facilitate trial court employees' participation in a county benefit plan. If trial court employees' ultimate status is court employment, this provision accommodates the situation that may arise in which some counties may require trial court employees' paychecks to be issued from the county in order for employees to receive benefits from the county.

Item IX of the preliminary model states that, if court employees' ultimate status is court or state employment, the possibility exists that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.

#### **Impact of Preliminary Model Under Each Employment Status Option**

Under all status options, trial court employees' group insurance and other employer-provided benefits would not be reduced as a result of the implementation of the new personnel system. Under the status option of county, represented employees would receive the same level of benefits as under existing memoranda of understanding, subject to meet and confer. Unrepresented employees would receive the same level of benefits, subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.

Under the employment status option of county, union representatives would negotiate with the county and the local trial court administration. Under this status option, the court might have less control over the types of benefits and costs of a particular negotiated benefit since the total number of court employees would be a small percentage of the total number of county employees.

Under the status options of court and state, represented employees would receive the same level of benefits as under existing memoranda of understanding or for a period of 24 months, whichever is longer. Once the 24-month period expires or the memorandum of understanding expires, whichever is later, represented employees would meet and confer regarding future benefits.

Under the employment status option of state, union representatives would negotiate with the local trial court administration with the involvement of the state judicial

branch. For smaller courts and counties with less generous group insurance and employer-provided benefits, this could create pressure to ensure that future group insurance and other employer-provided benefits conform to state benefits if the benefits offered by the state are better than what the trial court employees are receiving.

Under the employment status option of court, union representatives would negotiate with the local trial court administration. If there is a wide disparity in the benefits offered by the court and the county, this could affect the ability of the court to attract or retain employees in the local market. This could create pressure to ensure that future group insurance and other employer-provided benefits conform to the benefits received by county employees.

If the employment status option is either state or court, the local trial court would be responsible for the administration of group insurance and other employer-provided benefits. In addition to the issue of local courts having responsibility for the administration of group insurance and other employer-provided benefits and for contracting to provide these benefits, scale and volume may become a concern for small courts. For example, the cost of health insurance benefits for a small court could be higher than the current cost for the same employees under the current county health insurance benefit plan. Also, benefits are secured through contractual obligations, and although it is unlikely, a vendor could refuse to cover trial court employees as a result of a change in their employment status. In consideration of these issues, the model allows for the development of other group insurance benefit plans and for the opportunity to develop regional or statewide plans.

### **Additional Considerations and the Recommended Benefits Model**

As a result of further deliberations by the task force, consideration of comments received on the second interim report, and the selection of court as the employment status for trial court employees, the task force made some modifications to the preliminary benefits model. The primary changes include eliminating all references to county or state employment status.

The other modification appears in item VI.C of the model and reflects the task force's recommendation that counties be given statutory authority to provide benefits to court employees beyond the transition period identified in the model. This statutory language would ensure that counties have the authority to provide these benefits to court employees if the court requests this and the county agrees to do so. This section in the recommended model also has language to clarify that the county's agreement to provide the benefits is not to be interpreted as an obligation on the part of the county to meet and confer with any recognized court employee organization.

<b>Recommended Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect or for a period of 24 months, whichever is longer, represented trial court employees shall continue to receive the same level<sup>103</sup> of benefits as provided under the memoranda of understanding unless there is a mutual agreement to a change.
- III. Unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.
- IV. If there is a change in responsibility for administering<sup>104</sup> benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county may include trial court employees in its benefit plans, as permitted by law or vendor.
- V. The court will reimburse the county for the cost of coverage of trial court employees in county benefit plans.
- VI. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
    1. At the time of implementation of the trial court employee personnel system, if the county administers benefits or the court contracts with the county to administer benefits, the court may either continue to receive benefits from the county as provided in item VI.D or administer benefits directly

<sup>103</sup> For the purpose of this model, *same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means comparable level of benefits.

<sup>104</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity is responsible for making available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.

through the following transition provisions: While existing memoranda of understanding remain in effect or for a period of up to 24 months, whichever is longer, counties will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the trial court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.

2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer unrepresented trial court employees' benefits unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.
  3. If, during the 24-month transition period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits.
  4. If the court intends to give notice to the county that it no longer needs the county to administer specified benefits, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.
- B. The court and the county may mutually agree that the county will administer the payroll for trial court employees to facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible.
- C. The counties shall have statutory authority to provide benefits to court employees if such benefits are requested by the court and subject to county concurrence to providing such benefits. A county's agreement to provide such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.

- D. This model does not exclude the possibility that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.

## **I. Retiree Group Insurance Benefits**

### **Background**

It was important to the task force that the group insurance benefits of those trial court employees who retire after implementation of the trial court employee personnel system not be affected as a result of the implementation of the new personnel system. To accomplish this, the task force recognized the necessity of protecting those benefits and providing for a transition period, if needed, to transfer responsibility for administration of group insurance benefits for retiring trial court employees to any successor employer.

Retiree group insurance benefits can include such benefits as medical, dental, vision, or other like benefits. Retiree group insurance benefits generally are unfunded liabilities. However, some counties use excess funding in their retirement systems to fund retiree group insurance benefits, and some counties may prefund retiree group insurance benefits.

The model developed by the task force applies to those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system and who retire after implementation of the new personnel system. The model does not apply to employees who retired before the date of implementation of the new trial court employee personnel system.

Within the 58 separate county systems, a wide variety of benefits, including retiree group insurance benefits, are offered to trial court employees. The task force obtained information about retiree group insurance benefits from a survey of trial court employees' benefits conducted earlier this year. Final analyses of this survey data are being completed and will be published as an addendum to this final report.

### **Education: Retiree Group Insurance Benefits**

The task force received education from Ms. Judith A. Myers, staff to the task force, regarding group insurance benefits applicable to trial court employees. Mr. Ken Marzion, Chief of the Actuarial and Employer Services Division, CalPERS, provided education and an overview of retiree health benefits offered through CalPERS. Mr. Steve Keil, Legislative Coordinator, California State Association of Counties, provided education about retiree group insurance benefits in 1937 Act counties and described the diverse funding mechanisms and arrangements among the county systems for retiree group insurance benefits, including excess earnings, unfunded liabilities, prefunding, and alternative funding provisions.

**Assumptions and Objectives: Retiree Group Insurance Benefits**

The task force used the following assumptions and objectives in developing a recommended model for retiree group insurance benefits:

***Assumptions:***

1. Implementation of the trial court employee personnel system may require changes in existing statutes.
2. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
3. This model assumes no changes in federal law.
4. In some counties, retiree group insurance benefits are unfunded liabilities; in some counties they are prefunded. Some counties use excess funding in their retirement systems to fund retiree group insurance benefits.
5. Determination of liability for such benefits for employees who have retired prior to implementation of the trial court personnel system is a policy issue that is outside the scope of the task force's charge.
6. Retiree group insurance benefit plans are separate from defined-benefit retirement plans.
7. Retiree group insurance benefits for represented employees may be bargainable in the meet and confer process and may be changed upon expiration of memoranda of understanding or revision of personnel policies.
8. Group insurance benefits vendors are independent entities and may or may not be legally required to provide group insurance benefits to retired trial court employees.

***Objectives:***

- A. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. If there is a change in the employment status of trial court employees, the transition to a new employer will not have a significant financial impact on the new and former employers.
- C. The retiree group insurance model does not apply to employees who retired before the date of implementation of the new trial court employee personnel system.
- D. If retiree group insurance benefits are funded with an excess of funds in a county retirement system or prefunded by the county, the county shall provide the court with the same amount of funding for each trial court employee who retires, as prefunded by the county, for each county employee who retires.



- E. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>105</sup> of group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- F. This model will allow for a transition period to transfer responsibility for administration of group insurance benefits for retiring trial court employees to the employer.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how retiree group insurance benefits would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

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<sup>105</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<b>Preliminary Retiree Group Insurance Benefits Model</b>
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- I. This model applies to active trial court employees on the date of implementation of the trial court employee personnel system who retire after implementation of the trial court employee personnel system; this model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.
- II. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.<sup>106</sup>
- III. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>107</sup> of retiree group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If there is a change in responsibility for administering<sup>108</sup> retiree group insurance benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in its retiree group insurance benefit plans regardless of the employment status of trial court employees, as permitted by law or vendor.
- V. The court or state, as the case may be, will reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group

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<sup>106</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

<sup>107</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<sup>108</sup> For the purposes of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

insurance benefits. The county and the court may agree to an alternative arrangement to administer and fund retiree group insurance benefits.

- VI. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *county* employment, each county or county retirement system will continue to administer retiree group insurance benefits to retired trial court employees in the same manner and under the same conditions that it administers these benefits to other retired county employees.
- VII. If, as a result of implementation of the trial court employee personnel system, court employees' status is *court* or *state* employment, the following provisions govern which entity will be responsible for administering the retiree group insurance benefits:
- A. In those counties that fund retiree group insurance benefits from excess funds in their retirement systems or prefund retiree group insurance benefits, the county shall administer retiree group insurance benefits to trial court employees who retire from that county retirement system. The county and the court may agree to an alternative arrangement to administer retiree group insurance benefits.
- B. In all counties not included in item VII.A:
1. At the time of implementation of the trial court employee personnel system, if the court administers retiree group insurance benefits to trial court employees separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
  2. At the time of implementation of the trial court employee personnel system, if the county administers retiree group insurance benefits, or if the court contracts with the county to administer retiree group insurance benefits to trial court employees, the following provisions govern the transition of responsibility for administering these benefits to the court:
    - a) While existing memoranda of understanding remain in effect or for a transition period of up to 24 months, whichever is longer, counties will administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memoranda of understanding, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the

county mutually agree that the county will no longer administer specified benefits.

- b) For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' retiree group insurance benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.
- c) If, during the 24-month transition period, the court decides to offer particular retiree group insurance benefits that are different from what the county is administering, then the court will be responsible for administering those particular retiree group insurance benefits.
- d) If the court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

VIII. This model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans for trial court employees that may be developed subject to meet and confer.

**Preliminary Considerations: Retiree Group Insurance Benefits**

Stability and protection of benefits for trial court employees retiring after the implementation of the new personnel system and providing a sufficient transition period were important to the task force in developing their recommendations for the retiree group insurance benefits model.

As mentioned earlier, the preliminary retiree group insurance benefits model contained language for all three status options: state, court, and county. To provide insight into the impact of the model under the various employment status options as contemplated by the task force, the considerations for each possibility are included in the discussion below.

The model applies to employees who are active trial court employees on the date of implementation of the trial court employee personnel system and who retire after implementation of the trial court employee personnel system. The model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.

Sections of the model protect trial court employees' retiree group insurance benefits at the time of implementation of the new system. The model provides that the level of retiree group insurance benefits provided to active trial court employees through either memoranda of understanding or personnel policies will not be reduced. While these existing personnel policies or memoranda of understanding are in effect, active trial court employees who retire will receive the same level of retiree group insurance benefits.

Item IV introduces the concept of a transition period, which was explained more fully in items VI and VII of the preliminary model. Item IV provides that the court or the county may include, as permitted by law or vendor, trial court employees in its retiree group insurance benefit plans regardless of the employment status of trial court employees during this transition period.

The task force was aware that some retiree group insurance benefits are funded with an excess of funds in a county retirement system, and some counties prefund retiree group insurance benefits. Item V addresses the situation where a county funds retiree group insurance benefits. In those cases, the county may charge the court only the amount that the county is required to pay in excess of the retirement system funding or prefunding.

The preliminary model explained how the transition would be different, if there were to be a change in employment status, depending on how retiree group insurance benefits are administered and funded. As used in the model, the terms

*administering, administration of, and administers* mean that the entity contracts with a vendor or otherwise makes available particular benefits. These terms are not intended to indicate which entity is responsible for paying the costs for these benefits. Item VI of the preliminary model recognized that if the employment status were to be county, each county or county retirement system would continue to administer retiree group insurance benefits to retired court employees in the same way that these benefits are provided to other retired county employees.

Item VII.A in the preliminary model states that if court or state were to be the employment status and the county funds retiree group insurance benefits from excess funds in its retirement system or prefunds retiree group insurance benefits, the county would continue to provide these benefits to trial court employees who retire from the county system. As stated in item V, the court and county may also mutually agree to an alternative arrangement.

Pursuant to the Trial Court Funding Act, Government Code section 77212, as of July 1, 1998, item VII.B.1 takes into consideration that counties and courts can notify each other that they no longer wish to furnish or accept specific services. This severance of services may be effective as early as the first day of the succeeding fiscal year. For example, the county may give notice to the court that it will no longer furnish a specific service, or the court may give notice to the county that the court no longer needs the county to provide a specific service. If the court or the county exercise this option, it is possible that by the time a new personnel structure is implemented, in some counties responsibility for retiree group insurance benefits may have already been transferred from the county to the court.

Item VII.B.1 of the preliminary model provides for the situation in which the court is administering retiree group insurance benefits at the time the trial court personnel structure is implemented. In this event, if the employment status were to be court or state, the court would continue to administer retiree group insurance benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding.

Item VII.B.2 of the preliminary model provides for a transition of responsibility for the administration of retiree group insurance benefits in the event that the county administers retiree group insurance benefits or the court contracts with the county for these benefits at the time the trial court personnel system is implemented. This transition provides that, for a period of 24 months or while existing memoranda of understanding are in effect, whichever is longer, the counties will continue to administer retiree group insurance benefits for represented employees who retire during that period, unless the court notifies the county that it no longer needs the county to administer the retiree group insurance

benefits or there is mutual agreement that the county will not administer these benefits.

The model also provides a 24-month transition period for unrepresented trial court employees. During this time, the county will administer the benefits unless the court notifies the county that it no longer needs the county to administer these benefits or the county and the court mutually agree that the county will not administer benefits.

If the county intends to change unrepresented employees' retiree group insurance benefits within this 24-month transition period, the county must provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change may be implemented. This 60 days' notice will allow time for the court to decide whether to accept the county's change or to consider alternatives to provide retiree group insurance on its own. A 60 days' notice is also required if the court intends to notify the county that it no longer needs the county to administer retiree group insurance benefits to trial court employees. The court and the county may also mutually agree to another amount of time.

During the 24-month transition period, if the employment status is court or state, the court is responsible for administering any retiree group insurance benefits the court decides to offer that are different from what the county is administering.

#### **Impact of Preliminary Model Under Each Employment Status Option**

For all status options, the model ensures that represented employees receive the same level of retiree group insurance benefits for the life of their memoranda of understanding. Retiree group insurance benefits are subject to change upon expiration of memoranda of understanding or pursuant to the terms of the memoranda of understanding, subject to meet and confer. Unrepresented employees receive the level of retiree group insurance benefits provided in personnel policies, procedures, and plans, which are also subject to change.

Retiree group insurance benefits are generally an unfunded liability. The determination of liability for such benefits for employees who have retired prior to implementation of the trial court personnel system is a policy issue that is outside the purview of the task force.

If the status of court employees were to be state or court employment, the preliminary model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans that may be developed subject to meet and confer.

**Additional Considerations and the Recommended Retiree Group Insurance Benefits Model**

As a result of further deliberations by the task force and the selection of court as the employment status for trial court employees, the task force made several modifications to the preliminary retiree group insurance benefits model. The primary changes made to the model include eliminating all references to county or state employment status options.

Additionally, item VI of the model was modified to clarify that the court may either continue to receive retiree group insurance benefits from the county, as provided in item VII of the model, or administer retiree group insurance benefits through the transition provisions discussed in item VI.B.2.b of the model. Another modification to the recommended model is the addition of item VII. Item VII reflects the task force's recommendation that statutory provisions be made that would allow counties to provide court employees with retiree group insurance beyond the transition period in the model. The task force felt this issue should be addressed in the statute to ensure that the counties would have the authority to provide retiree group insurance benefits to the trial court employees if the court requests this and the court agrees to do so. Language was also added to the recommended model to clarify that any request by the court for the county to provide retiree group insurance benefits is not to be interpreted as an obligation to meet and confer. The recommended model includes changes made to the model eliminating all references to county or state employment status options.



**Recommended Retiree Group Insurance Benefits<sup>109</sup> Model**

- I. This model applies to active trial court employees on the date of implementation of the trial court employee personnel system who retire after implementation of the trial court employee personnel system; this model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.
- II. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.
- III. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>110</sup> of retiree group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If there is a change in responsibility for administering<sup>111</sup> retiree group insurance benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in its retiree group insurance benefit plans as permitted by law or vendor.
- V. The court will reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the court may agree to an alternative arrangement to administer and fund retiree group insurance benefits.

<sup>109</sup> *Retiree benefits* refers to benefits active trial court employees would receive upon retirement.

<sup>110</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<sup>111</sup> For the purposes of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

- VI. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the retiree group insurance benefits:
- A. In those counties that fund retiree group insurance benefits from excess funds in their retirement systems or prefund retiree group insurance benefits, the county shall administer retiree group insurance benefits to trial court employees who retire from that county retirement system. The county and the court may agree to an alternative arrangement to administer retiree group insurance benefits.
  - B. In all counties not included in item VI.A:
    - 1. At the time of implementation of the trial court employee personnel system, if the court administers retiree group insurance benefits to trial court employees separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
    - 2. At the time of implementation of the trial court employee personnel system, if the county administers retiree group insurance benefits, or if the court contracts with the county to administer retiree group insurance benefits to trial court employees, the court may either continue to receive retiree group insurance benefits from the county as provided in item VII or administer retiree group insurance benefits through the following transition provisions:
      - a) While existing memoranda of understanding remain in effect or for a transition period of up to 24 months, whichever is longer, counties will administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memoranda of understanding, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.
      - b) For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the

county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' retiree group insurance benefits, the county shall provide the court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

- c) If, during the 24-month transition period, the court decides to offer particular retiree group insurance benefits that are different from what the county is administering, then the court will be responsible for administering those particular retiree group insurance benefits.
- d) If the court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

VII. The counties shall have statutory authority to provide retiree group insurance benefits to court employees if such benefits are requested by the court, subject to county concurrence to provide such benefits. A county's agreement to provide such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.

VIII. This model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans for trial court employees that may be developed subject to meet and confer.

## **J. Federally Regulated Benefits**

### **Background**

Federally regulated benefits are benefits that provide tax-favored treatment for employees. The federal government, through the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities, governs the provisions of these benefits. Typically, federally regulated benefits are included in what are commonly called cafeteria plans, flexible benefit plans, or flexible spending arrangements. The portions of these plans that offer tax advantages and therefore are considered federally regulated benefits include flexible spending accounts covering health and dependent care under Code section 125, educational assistance benefits under Code section 127, and fringe benefits under Code section 132.

The task force conducted a survey of all trial court employee benefits. The results of the survey have been compiled and initial analyses completed. Due to the size and complexity of the database, the last analysis is being finalized. The final analysis will be published in an addendum to the final report. The initial analysis provided the task force with information on all federally regulated benefits currently offered in the trial courts.

This discussion of federally regulated benefits addresses only the commonly offered Section 125 plans. Section 125 plans allow the employee to pay pretax for such benefits as medical, dental, vision, disability, and life insurance. Flexible spending accounts for health or dependent care provide benefits by permitting employees to set aside amounts from their paychecks on a pretax basis over a 12-month period to cover medical payments not covered by insurance, such as deductible amounts and co-payments or dependent-care payments. Employees estimate eligible expenses during the coming year and contribute monthly to set aside the amount estimated. When expenses are incurred, employees submit claim forms and receive tax-free reimbursement for the covered expenses.

Both the employee and the employer incur risk in undertaking a health care flexible spending account. The employee must forfeit amounts of money left in the account at year's end. However, employees are entitled to use the full amount estimated for the year immediately. For example, if an employee contributes for only one month, incurs a covered health expense equal to the entire estimated amount, and then leaves employment, the employer must pay the full amount, even though the employee contributed only one month toward the total.

Employees incur some risk in participating in dependent-care flexible spending accounts because they forfeit unused contributions. The employer has no risk because eligible expenses are reimbursable only up to the amount contributed by the employee minus any amounts already reimbursed from the account to the employee.

Legally, only employees can participate in an employer's Section 125 plan. The determination of whether a person is an employee is governed by Internal Revenue Service standards. Therefore, if trial court employees were state or court employees after implementation of the new personnel system, they would not be able to participate in county Section 125 plans unless the court is a co-sponsor of the plan. If the court is a co-sponsor of the plan with the county, trial court employees could remain in the county plan even though they are not county employees.

Trial court employees are currently participating in county federally regulated benefits programs that vary widely as to the benefits themselves as well as the plan year for those benefits. Of the 58 counties, 27 have health care flexible spending accounts, and 39 have dependent-care flexible spending accounts. Some plan years coincide with the calendar year, some coincide with the fiscal year, and some begin on dates other than January 1 or July 1. Because of the risk to the employee and the employer described above, transition to a new employer on any date other than the first day of the plan year in each county could negatively affect either the employee or the employer. Transition during a plan year could result in employees forfeiting unused contributions and employers being unable to collect all of the employees' promised contributions to cover previous distributions.

In developing its federally regulated benefits assumptions, objectives, and model, the task force paid particular attention to avoiding any potential negative impact on employees or employers during the implementation of the new personnel system.

**Education: Federally Regulated Benefits**

The task force received education on federally regulated benefits and, in particular, Section 125 plans. Ms. Barbara McGeoch, an attorney with William M. Mercer, Inc., provided general education regarding Section 125 plans and discussed possible implementation strategies that would minimize or eliminate any negative impact on transition to a new employer.

**Definition, Assumptions, and Objectives: Federally Regulated Benefits**

The task force developed a definition, assumptions, and objectives as follows:

***Definition:***

Federally regulated employee benefits are benefits that often include tax-favored treatment for employees. Such arrangements are governed by the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities. Examples of federally regulated benefits include, but are not limited to, cafeteria plans under Code section 125, educational assistance benefits under Code section 127, and fringe benefits under Code section 132. Deferred compensation benefits, which are also governed by federal law, are addressed in a separate model.

***Assumptions:***

1. Federal laws govern federally regulated benefits.
2. For the purposes of federally regulated benefits, trial court employees are currently considered county employees.
3. The Code provides that only employees may participate in an employer's Section 125 cafeteria plan.
4. The State of California requires an employee to be paid through the State Controller's Office in order to participate in the state's Section 125 plan.
5. If there is a transition to a new employer, under COBRA employees may retain access to amounts already contributed to their health care flexible spending account with the former employer.
6. The Code requires that employees participating in a Section 125 plan have immediate access to the full amount they contracted to contribute to a medical reimbursement account for the plan year. (For example, if the employee contributes for one month, spends the full year's reimbursement account, and leaves employment in the second month, the employer cannot receive any additional contributions from the former employee.)
7. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.

***Objectives:***

- A. The level of federally regulated benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level<sup>112</sup> of federally regulated benefits as provided under the memoranda of understanding.

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<sup>112</sup> For the purposes of this model, *same level* means the same federally regulated benefits unless they are not permitted by law or vendor, in which case *same level* means comparable level of federally regulated benefits.

- C. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, with respect to federally regulated benefits, to the extent permitted by law:
- 1) The successor employer shall provide trial court employees with the same or comparable benefits;
  - 2) Trial court employees must retain access to dollar amounts already deposited with their former employer in federally regulated benefits accounts;
  - 3) The transition to a new employment status will not result in a financial liability for employees or new or former employers; and
  - 4) The court and county may mutually agree that the county will administer the payroll for trial court employees to facilitate trial court employee participation in the county benefit plans, for which trial court employees may be eligible.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how federally regulated benefits would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

<b>Preliminary Federally Regulated Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of federally regulated benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of federally regulated benefits as provided under the memoranda of understanding.
- III. Federally regulated benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If, upon implementation of the trial court employee personnel system, the entity that administers<sup>113</sup> the federally regulated benefit plan is not the employer of trial court employees, then an effective date for the transfer of responsibility for administering federally regulated benefits must be determined. This effective date must be established to coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.
- V. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *county* employment, the following provisions govern which entity will be responsible for administering the federally regulated benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the county shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
  - B. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the following provisions govern the transition of responsibility for administering these benefits to the county:

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<sup>113</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.



1. Until the effective date of the transition, courts will administer represented trial court employees' federally regulated benefits as provided in the memoranda of understanding, subject to meet and confer.
2. Until the effective date of transition, courts will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue so long as the trial court employees are governed by a plan not offered by the county, but in no event longer than 18 months unless the county and the court agree to continued co-sponsorship.
4. If, during the co-sponsorship period, the county decides to offer particular benefits that are different from what the court is administering, then the county will be responsible for administering those particular benefits unless the court and the county agree to an alternative.<sup>114</sup>

VI. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *court* or *state* employment, the following provisions govern which entity will be responsible for administering the federally regulated benefits:

- A. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
- B. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:
  1. Until the effective date of the transition, counties will administer represented trial court employees' federally

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<sup>114</sup> The determination of authority to make changes to benefits, that is, county versus court authority, depends on the employment status recommended by the task force and will be addressed separately.

- regulated benefits as provided in the memoranda of understanding.
2. Until the effective date of the transition, counties will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
  3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue so long as the trial court employees are governed by a plan not offered by the court, but in no event longer than 18 months unless the court and the county agree to continued co-sponsorship.
  4. If, during the co-sponsorship period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits unless the court and the county agree to an alternative.<sup>115</sup>
- VII. To facilitate trial court employee participation in county benefit plans for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VIII. The court or state, as the case may be, will reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefits plans.
- IX. This model does not exclude the possibility that the courts may have a future option of participating in other federally regulated benefit plans that may be developed subject to meet and confer.

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<sup>115</sup> The determination of authority to make changes to benefits, that is, county versus court authority, depends on the employment status recommended by the task force and will be addressed separately.

**Preliminary Considerations: Federally Regulated Benefits**

The intent of this model is to protect those federally regulated benefits that trial court employees currently have, as well as ensure that there is no negative impact on either the employee or the employer if there is a transition to a new employer. As mentioned earlier, the preliminary benefits model contained language for all three status options: state, court, and county.

The task force considered several transition strategies that could be used to protect these benefits should a change in employer occur. These included the following: (1) select an implementation date that coincides with the first day of the new Section 125 plan year, (2) provide the employee with money in the new employer's Section 125 plan equivalent to the amount accumulated but not yet paid out to the employee from the former employer's plan, and (3) allow the employee to continue participation in the old employer's health care flexible spending account plan through COBRA (this option does not apply to dependent care).

All of these options require the employer to have a flexible spending account in place at the time of transition. The last two options require coordination between the former employer and the new employer to implement the transfer of the benefits.

The task force initially favored having the implementation date coincide with the first day of the plan year because this approach appeared to be the most easily understood and required no administrative coordination between the two employers. The task force asked the staff to obtain information from the survey of the trial courts conducted by Mercer to determine how many courts had Section 125 plans and what plan years were used. Currently, there are 27 health care flexible spending accounts, of which 18 use the calendar year, 3 use the fiscal year, and the rest use other plan years. There are 39 dependent-care flexible spending accounts, of which 28 use the calendar year, 5 use the fiscal year, and the rest use other plan years.

The task force ultimately rejected the concept of having the implementation date on the first day of the plan year because it could delay the implementation of the entire trial court personnel system. Subsequent to other research, the task force adopted an alternative that allows the court and the county to be co-sponsors of the federally regulated benefit plans until a transition between employers can be arranged on the first day of the plan year. Co-sponsorship would allow the employees to continue to participate in the old employer's plan until the new employer develops its own plan and would allow the co-sponsors to transfer responsibility for administering federally regulated benefits to the new employer effective on the first day of the applicable plan year.

The task force adopted a model that recommends that trial court employees retain their federally regulated benefits upon transition to the new personnel system. Since the plan years vary among the various courts, the task force recommended a model that would account for varying transition dates if there were to be a transition to a new employer. To ensure that neither the employee nor the employer is disadvantaged by the transfer of responsibility for federally regulated benefits, the model specifies that:

- Responsibility for administering the benefits will transfer on the first day of the plan year; and
- Prior to that transfer date, the former employer and the new employer will be co-sponsors of the federally regulated benefit plans.

The model recognizes that the county may no longer be providing federally regulated benefits to the court when the new personnel system is implemented. The Trial Court Funding Act provides an opportunity for counties and courts to give notice to each other that they no longer wish to furnish or accept specific services. Therefore, the model accounts for a transition of federally regulated benefits from the court to the county as well as from the county to the court.

Since contributions to federally regulated benefit plans are typically deducted from payroll, the model provides that the court and the county may agree that the county will administer payroll for trial court employees to facilitate their participation in county benefit plans.

The model does not preclude the courts from having a future option to participate in other federally regulated benefit plans on a county, regional, or statewide basis.

### **Impact of Preliminary Model Under Each Employment Status Option**

The task force considered the impact on trial court employees and on their employers of the federally regulated benefits model under each employment status option. Under all status options, the trial court employees' federally regulated benefits would not be reduced as a result of the implementation of the new personnel system. For all status options, the model also ensured that represented employees would receive the same level of benefits for the life of their memoranda of understanding. The benefits are subject to change when memoranda of understanding are revised upon expiration or pursuant to the terms of the memoranda of understanding, through the meet and confer process. Unrepresented employees receive the level of benefits provided in personnel policies, procedures, and plans, which are also subject to change.

Under the *county* employment status option, all trial court employees currently participating in county plans would remain in their local county federally regulated benefits plans. If the county were no longer providing this service to the court at the time of implementation, then the court would add the county to its plans as a co-sponsor and continue to administer the benefits. Administration of these benefits would transition to the county, effective the first day of a new plan year.

Under the *court* or *state* employment status option, all trial court employees currently participating in court plans would remain in their local court federally regulated benefits plans. If the county were administering these benefits for court employees, then the county would add the court to its plans as a co-sponsor and continue to administer the benefits. Administration of these benefits would transition to the court, effective the first day of a new plan year.

The model does not specify that the transition to a new employer must occur on the first day of the next plan year because that date might not allow sufficient time for an orderly transition. Therefore, an 18-month transition period is provided, during which time the co-sponsorship of the plan would continue until the transition to the new employer, effective on the first day of the subsequent plan year.

The task force considered whether trial court employees could participate in the state's Section 125 plan if they were to become state employees. However, the state requires that state employees receive a paycheck from the State Controller's Office in order to participate in the state's plan. State employees who do not receive a paycheck from the State Controller are not eligible to participate. Since these models assume local administration of the courts' payroll, participation in the state's federally regulated benefits plan was not an option for court employees. However, the model does not preclude the development of other federally regulated benefits plans for trial court employees to provide an opportunity for regional or statewide plans.

### **Additional Considerations and the Recommended Final Federally Regulated Benefits Model**

As a result of further deliberations by the task force, comments received regarding the second interim report, and the selection of court as the employment status for trial court employees, the task force made modifications to the initial federally regulated benefits model. The primary changes included eliminating all references to county or state employment status options.

An additional modification appears in item IX of the recommended model. The addition of this item reflects the task force's concern that statutory provisions be adopted that would allow counties to co-sponsor federally regulated benefits with the courts in order to provide these benefits to court employees beyond the 18-month transition period required in the model. This statutory language would ensure that counties have the authority to provide these federally regulated benefits to court employees as a co-sponsor if the court requests this and the county agrees to do so. Language was also added to the recommended model to clarify that the county's agreement to co-sponsor federally regulated benefits is not to be interpreted as an obligation on the part of the county to meet and confer with any recognized court employee organization.

The task force's final recommendations regarding federally regulated benefits are presented here.

<b>Recommended Federally Regulated Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of federally regulated benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of federally regulated benefits as provided under the memoranda of understanding.
- III. Federally regulated benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If, upon implementation of the trial court employee personnel system, the entity that administers<sup>116</sup> the federally regulated benefit plan is not the court, then an effective date for the transfer of responsibility for administering federally regulated benefits must be determined. This effective date must be established to coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.
- V. Upon implementation of the trial court employee personnel system, the following provisions govern which entity will be responsible for administering the federally regulated benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
  - B. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:

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<sup>116</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.

1. Until the effective date of the transition, counties will administer represented trial court employees' federally regulated benefits as provided in the memoranda of understanding.
  2. Until the effective date of transition, counties will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
  3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue as long as the trial court employees are governed by a plan not offered by the court, but in no event longer than 18 months unless the court and the county agree to continued co-sponsorship.
  4. If, during the co-sponsorship period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits unless the court and county agree to an alternative.
- VI. To facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VII. The court will reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefits plans.
- VIII. This model does not exclude the possibility that the courts may have a future option of participating in other federally regulated benefit plans that may be developed subject to meet and confer.
- IX. The counties shall have statutory authority to co-sponsor federally regulated benefits with the courts to provide such benefits to court employees if such benefits are requested by the court subject to county concurrence to co-sponsor such benefits. A county's agreement to co-sponsor such benefits shall not be construed as creating a meet and confer obligation between the county and any recognized court employee organization.



## **K. Deferred Compensation Plan Benefits**

### **Background**

Deferred compensation plans are federally regulated plans that allow employees to save on a pretax basis. The most common types of deferred compensation plans are derived from Internal Revenue Code sections 401(k) and 457. The task force recognizes that deferred compensation plans are an important part of the retirement plans of the trial court employees who participate in them. These plans also serve as part of the compensation provided to some trial court employees in those counties where the employer contributes to the plan on behalf of the employee.

Deferred compensation 401(k) plans were available to governmental entities for only a brief period in the early 1980s. The plans were intended as profit-sharing plans, but the legislation creating them did not specifically exclude nonprofit employers such as governmental entities. In addition to employee contributions to 401(k) plans, employer contributions may also be made to these plans. In 1986, the federal government precluded nonprofit organizations from establishing any new plans. However, those employers that had established 401(k) plans were allowed to continue to offer the plans to new employees as well as establish new or additional 401(k) plans after 1986.

Deferred compensation 457 plans were established for employees of state and local governments and tax-exempt organizations. The money deposited in these plans is held in trust by the employer on behalf of participating employees. Typically, only employees contribute to these plans, but some plans include an employer contribution.

An employer may offer deferred compensation plans only to its own employees. The determination of who is an employee for deferred compensation purposes is governed by Internal Revenue Service standards. In this case, if there is a change in trial court employment status, the Internal Revenue Service may consider the trial courts to be successor employers of the county. This means that employees may continue to participate in county deferred compensation plans. If the courts were not determined to be successor employers of the counties or if a court as a successor employer wanted to establish a plan separate from the county, the court could establish a new comparable, non-401(k) deferred compensation plan.

If the trial court offers a comparable plan, the county may require the trial court employees to leave their plan balances in the county's deferred compensation plan, or the county may transfer trial court employees' plan balances to the trial court's deferred compensation plan.

If one employer replaces another (for example, through merger or reorganization) and employees remain in the same jobs, a principle known as the “same desk rule” applies. Under this principle, there is no termination of service to cause a distribution of plan balances. Plan balances either remain in the former employer’s plan or are transferred to the new employer’s plan. This transfer may take place using a plan map. The plan map transfers the invested money to a comparable investment in the new plan. With a plan map transfer, the employee may have the option of making changes in the new investments either before the transfer or immediately after the transfer.

If balances are transferred from one employer’s deferred compensation plan to another employer’s plan, as dictated by particular contract provisions, deferred sales charges may be incurred as a result of the transfer. Deferred sales charges can be up to 5 percent of the employee’s assets in the plan and decrease with the number of years the employee has been in the plan.

Upon implementation of the trial court employee personnel system, to the extent possible, the task force intends to protect the investments that current employees have in their deferred compensation plans, ensures comparable investment opportunities, prevents employees from paying deferred sales charges, and preserves the opportunity to continue contributing to deferred compensation plans in those courts where they exist. The task force does not intend for its recommendations to affect any employer contribution programs that currently exist.

**Education: Deferred Compensation Plan Benefits**

The task force received education regarding deferred compensation programs from Ms. Judith A. Myers, staff project leader of the task force. Mr. Keith Sendall of ICMA Retirement Corporation, a company that administers deferred compensation programs for governmental employers, and Mr. Drew James of William M. Mercer, Inc., consultant to the task force, were available at the meeting for consultation during the discussion. Ms. Deborah Brown, staff attorney to the task force, also provided education regarding the preservation of deferred compensation programs on transition from one employer to another.

**Definition, Assumptions, and Objectives: Deferred Compensation Plan Benefits**

The task force subsequently developed a definition as well as assumptions and objectives.

***Definition:***

Deferred compensation plans are federally regulated plans that allow employees to save on a pretax basis. Deferred compensation plans are governed by the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities. These savings can come from either employee or employer contributions, or a combination of the two. The most common type of deferred compensation plans are eligible Code section 457 plans and qualified Code section 401(k) plans, referred to as 457 and 401(k) plans.

The 457 plans are those that for the 1999 tax year allow pretax contributions of up to \$8,000 or one-third of taxable pay, whichever is less. They also include a catch-up provision for additional contributions as an employee approaches retirement. Typically, only employees contribute to these plans, but some plans include an employer contribution.

The 401(k) plans are those that for the 1999 tax year allow an employee to contribute, pretax, up to \$10,000 or 25 percent of pay, whichever is less, to a retirement savings account. Employer contributions may also be made to 401(k) plans.

*Deferred compensation plan benefits* refers to the opportunity an employee may have to participate in deferred compensation plans, as well as to employer contributions to deferred compensation plans and investment options included in the plans.

***Assumptions:***

1. Federal laws govern deferred compensation plans.
2. Existing state law will require changes as a result of the implementation of the new trial court employee personnel system.
3. For purposes of deferred compensation, trial court employees are currently considered county employees.
4. State funding levels will not significantly increase as a result of the implementation of the trial court personnel system.
5. Governmental entities may establish 457 plans.
6. Governmental entities that did not have a 401(k) plan as of May 7, 1986, may not establish 401(k) plans.
7. Governmental entities that maintained a 401(k) plan before May 7, 1986, may continue to provide 401(k) plans to their employees and to employees of their successor entities.
8. For purposes of county-provided 401(k) and 457 plans, the IRS would consider the trial court employer to be a successor employer of the county. Thus, if court employees become employees of the trial court, they may

continue to participate in county 401(k) and 457 deferred compensation plans.<sup>117</sup>

9. Under the “same desk rule,” when one employer replaces another and employees retain the same jobs, for purposes of deferred compensation plan benefits, there is no termination of service to cause a distribution of plan balances. Thus, if court employees are offered deferred compensation plan benefits by a successor employer, counties may require that court employees leave their plan balances in the counties’ deferred compensation plans. In the alternative, counties may transfer trial court employees’ plan balances to the successor employer’s deferred compensation plans.
10. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees’ plan balances from county plans to the successor employer’s plans).

***Objectives:***

- A. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, the successor employer shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- C. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits<sup>118</sup> as provided under the memoranda of understanding.
- D. If the transition to a new employment status causes a change in deferred compensation plans and requires the transfer of court employees’ plan balances to a successor employer’s deferred compensation plans:
  - 1) Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - 2) Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court or state, as the case may be.

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<sup>117</sup> This assumption may require Internal Revenue Service private letter rulings and/or determination letters to confirm. Based on legal research and conversations with the Internal Revenue Service, most probably trial court employees may continue to receive deferred compensation plan benefits through county plans because courts would be considered related successor entities of the county with respect to judicial functions and trial court employment. Alternatively, the court and the county may be considered to have such close ties that for purposes of deferred compensation plans that the Internal Revenue Service may consider them to be a single employer.

<sup>118</sup> *Same level of deferred compensation plan benefits* as used in the objectives and model means the same deferred compensation plan benefits, including the opportunity to participate in the plan, employer contributions, and investment options, unless they are not permitted by law or vendor, in which case *same level of deferred compensation plan benefits* means comparable level of deferred compensation plan benefits.

- E. If trial court employees become court or state employees, a transition period will be provided that permits the new employer to establish the same or comparable deferred compensation plans or provide for a method to permit court employees to remain in county deferred compensation plans.
- F. To facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.

**Preliminary Model and Considerations**

At the time the task force published its second interim report in October 1999, the task force had not yet determined which employment status it would recommend for trial court employees. Therefore, the preliminary model created by the task force laid out how deferred compensation plan benefits would be administered and provided for under all three employment status options: state, court, and county. This preliminary model is presented here.

<b>Preliminary Deferred Compensation Plan Benefits Model</b>
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- I. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, the successor employer shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits as provided under the memoranda of understanding.
- IV. If the transition to a new employment status causes a change in deferred compensation plans and requires the transfer of court employees' plan balances to a successor employer's deferred compensation plans:
  - A. Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - B. Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court or state, as the case may be.
- V. If court employees become county employees, court employees shall continue to be eligible to receive deferred compensation plan benefits from the county.
- VI. If court employees become trial court or state employees, court employees shall continue to receive deferred compensation plan benefits from the county or court as follows:
  - A. For purposes of 401(k) plans:
    - 1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 401(k) deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or

2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
  - a) Upon transition to the new deferred compensation plan, to provide the successor employer time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and
  - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the successor employer's deferred compensation plan.
- A. For purposes of 457 deferred compensation plans:
  1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 457 deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or
  2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
    - a) Upon transition to the new deferred compensation plan, to provide the successor employer time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and
    - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the successor employer's deferred compensation plans.

- VII. Deferred compensation plan benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- VIII. To facilitate trial court employee participation in county benefit plans, for which they may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- IX. The court or state, as the case may be, will reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.
- X. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees' plan balances from county plans to the successor employer's plans).
- XI. This model does not exclude the possibility that the courts may have a future option of participating in other deferred compensation plans that may be developed subject to meet and confer.



**Preliminary Considerations: Deferred Compensation Plan Benefits**

The task force intended to protect trial court employees' opportunity to participate in deferred compensation plans where they exist as well as ensure that trial court employees who have deferred compensation balances retain their balances in the same or comparable investments. A survey taken by the task force revealed that some counties offer 401(k) plans, some offer 457 plans, and some offer both. Other types of deferred compensation plans also are offered, such as 401(a) plans.

Preserving trial court employees' 401(k) plans required particular attention since no new employers can establish plans if such plans were not in place by 1986. Those counties that established a 401(k) plan prior to 1986 have 401(k) plans in which trial court employees in those counties could continue to participate if the employment status were to be county.

The state has a 401(k) plan for state employees and could create a new plan for trial court employees. With the state's agreement, trial court employees may be eligible to participate in a state plan if they were to become state employees and the local trial court pursues such an alternative, subject to meet and confer. But trial courts, as separate employers from the counties, do not have existing 401(k) plans. The task force questioned whether the courts could establish new 401(k) plans.

After seeking legal counsel from several sources, the task force determined that most probably trial court employees may continue to receive deferred compensation plan benefits through county plans because courts would be considered related successor entities of the county with respect to judicial functions and trial court employment. Alternatively, the court and the county may be considered to have such close ties that, for purposes of deferred compensation plans, the Internal Revenue Service may consider them to be a single employer. A definitive answer would require an IRS private letter ruling, which the task force is considering seeking, depending on the status option recommended. If the trial courts are found to be successor employers, then trial court employees who are court or state employees may continue to receive deferred compensation plan benefits through county 401(k) plans, or the court may be able to establish its own 401(k) plan. If the courts are not determined to be successor employers of the counties, or if a court as a successor employer wants to establish a plan separate from that of the county, the court could establish new comparable, non-401(k) deferred compensation plans.

The same rationale would apply to 457 deferred compensation plans. The state has a 457 plan or could create a new plan for trial court employees. With state agreement, trial court employees may be eligible to participate in a state plan if

they become state employees and the local court pursues such an alternative, subject to meet and confer. If trial courts are found to be successor employers of the counties, then trial court employees who are court or state employees may continue to receive deferred compensation plan benefits through county 457 plans, or the court could establish a new comparable deferred compensation plan.

The task force concluded that employees should not bear the cost of transfer-related penalties such as deferred sales charges if they are forced to move their plan balances from the county deferred compensation plan to a new plan. Therefore, in the preliminary model the task force recommended that the court or state, as the case may be, should pay transfer-related penalties, if any.

**Impact of Preliminary Model Under Each Employment Status Option**

The task force considered the impact for trial court employees of the deferred compensation model under each employment status option. Under all status options, the trial court employees' deferred compensation plan benefits would not be reduced. As defined earlier, the deferred compensation plan benefits that would not be reduced include the opportunity an employee may have to participate in deferred compensation plans, to receive employer contributions to deferred compensation plans, and to choose among the investment options included in the plans.

For all status options, the model also ensures that employees receive the same level of benefits for the life of their memoranda of understanding, while recognizing that deferred compensation plan benefits are subject to change upon expiration of memoranda of understanding, upon modification pursuant to the terms of memoranda of understanding, or upon revision of personnel policies, procedures, or plans.

Under the county employment status option, all trial court employees would remain in their local county deferred compensation plans. Thus, employees in counties that offer a 457 plan would continue to have the opportunity to contribute to the 457 plan. Employees in counties with 401(k) plans would continue to have the opportunity to contribute to 401(k) plans. Those employees in counties that offer both plans would continue to have both plans available to them. Those employees with plans that permit an employer contribution or matching contribution would continue to have those employer contributions or matches available to them.

Under the state or court status option, as permitted by law or vendor, trial court employees could continue to participate in county 401(k) and 457 deferred compensation plans unless:

- The court chose to provide the same level of benefits on its own; or
- The court modified its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable.

If the court intends to provide its own deferred compensation plan either through modification of the county plan or by developing a plan of its own, a transition period of at least six months is provided to allow the court to establish its plan. Upon transition to a court plan, the counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer the balances to the successor employer's deferred compensation plan.

The model allows the possibility of development of other deferred compensation plans for trial court employees to provide an opportunity for regional or statewide plans.

#### **Additional Considerations and the Recommended Deferred Compensation Plan Benefits Model**

As mentioned earlier, the preliminary deferred compensation plan benefits model contained language for all three status options, state, court, and county, to provide insight into the impact of the model under various options as contemplated by the task force. As a result of further deliberations by the task force and the selection of court as the employment status for trial court employees, the task force eliminated all references to county or state employment status in the recommended deferred compensation plan benefits model. No other changes were made to the model.

<b>Recommended Deferred Compensation Plan Benefits Model</b>
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- I. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. Upon implementation of the trial court employee personnel system, the court shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits as provided under the memoranda of understanding.
- IV. If the transition to court employment status causes a change in deferred compensation plans and requires the transfer of court employees' plan balances to the court's deferred compensation plans:
  - A. Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - B. Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court.
- V. Court employees shall continue to be eligible to receive deferred compensation plan benefits from the county or court as follows:
  - A. For purposes of 401(k) plans:
    - 1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 401(k) deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or
    - 2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
      - a) Upon transition to the new deferred compensation plan, to give the court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and

- b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the court's deferred compensation plan.
  - B. For purposes of 457 deferred compensation plans:
    - 1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 457 deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable, or
    - 2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
      - a) Upon transition to the new deferred compensation plan, to give the court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county.
      - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the court's deferred compensation plans.
- VI. Deferred compensation plan benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding, subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- VII. To facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VIII. The court will reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.

- IX. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees' plan balances from county plans to the court's plans).
- X. This model does not exclude the possibility that the courts may have a future option of participating in other deferred compensation plans that may be developed subject to meet and confer.

## **L. Transition**

### **Background**

Many elements of the new trial court employee personnel system will require a transition period before they can become fully implemented. In each of the preceding personnel components, the task force addressed several transition issues within the models themselves. Several other transition issues, however, are outside the scope of these preceding models and are thus included in this separate transition model.

In changing to the new trial court employee personnel system, some transition issues will be similar to those addressed in the transition to a unified court system. The unification transition provisions were established by Senate Bill 2139 and are codified in Government Code sections 70210 through 70219. In addition to addressing transition issues identified by the task force, the transition objectives and model that follow incorporate pertinent sections from the unification transition provisions. The objectives and model also refer to existing labor relations statutes and rules of court that will continue to apply to trial court employees.

### **Assumptions and Objectives: Transition**

The task force used the following assumptions and objectives:

#### ***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes in current federal law.
3. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.
4. County charter provisions that legislate county affairs cannot be superseded or modified by state law.
5. County charter provisions may restrict or preclude employee portability or transferability between other employers and the county. To the extent that the model conflicts with charter provisions, the model shall not apply.
6. Legislation enacting a personnel system for trial court employees will not be enacted through urgency legislation.

#### ***Objectives:***

- A. Trial court employees will not be affected negatively by the transition to the trial court employee personnel system.
- B. Upon transition, existing memoranda of understanding remain in effect.

- C. Implementation of the trial court employee personnel system will not affect the transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) for purposes of unification.

**Preliminary Model and Considerations**

The preceding assumptions and objectives were modified slightly after the publication of the second interim report. After the second interim report was distributed in October 1999, the task force added assumptions 4 through 6. The task force also made minor wording changes to the original objectives. The model directly below is the model that was included in the second interim report, before the task force had made its employment status determination. The following model was also written before the task force had addressed several previously unresolved issues, including (1) the time for the successor employer to implement a support structure, (2) employees' mobility rights between the county and the court, (3) transfer of disciplinary actions, and (4) union security (agency shop) continuation. These issues were addressed by the task force in November 1999 and are included in the recommended transition model.



<b>Preliminary Transition Model</b>
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Upon implementation of the trial court employee personnel system:

- I. All current court employees who work for the court become the employees of the successor employer: state, court, county, or other.
- II. The terms of any memorandum of understanding shall remain in effect until the memorandum of understanding expires, is amended, or is replaced, subject to meet and confer. Upon expiration of memoranda of understanding, the successor employer<sup>119</sup> shall meet and confer with recognized court employee organizations.
- III. An employee organization that is recognized as a representative of a group of court employees or the exclusive representative of an established bargaining unit of court employees, either by the county or the court, shall be recognized by the successor employer as a representative, or the exclusive representative, of the same employees.
- IV. Unrepresented employees are governed by their employer's personnel policies, procedures, and plans. The transition to a new employer status shall not of itself be a basis for changing the employer's personnel policies, procedures, and plans except where otherwise required by the new trial court employee personnel system or by law. The successor employer retains previously existing rights with respect to revision of its personnel policies, procedures, and plans.
- V. Employment seniority of a court employee on the date of implementation of the trial court employee personnel system, as calculated under the predecessor's system, shall be counted toward seniority with the successor employer to the extent not prohibited by law.
- VI. The employment status of a court employee as a probationary, permanent, or regular employee shall remain in effect, and the employee shall be considered to have transferred to the successor employer with that status, so that probationary employees will not be required to serve a new probationary period but rather to complete the existing probationary period under the terms of hire to the extent not prohibited by law.

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<sup>119</sup> In relation to meet and confer, *successor employer* means the trial court, the trial court with the involvement of the state, or the trial court with the involvement of the county, as the case may be. See "Definitions of Employment Status Options: State, County, Court and Other" in Part IV of this report.

- VII. The classification and salary rate of a court employee shall remain in effect, and the employee shall be considered to have transferred to the successor employer at the same classification and salary rate to the extent not prohibited by law.
- VIII. Implementation of the trial court employee personnel system will not affect the transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) for purposes of unification.

**Preliminary Considerations: Transition**

As mentioned earlier, at the time the task force published its second interim report in October 1999, the task force had not determined which employment status trial court employees should have: state, court, county, or other. The task force therefore considered transition issues under all possible employment status options.

Under any employment status option, the transition model recognizes trial court employees as having become employees of a successor employer. Unless otherwise indicated in particular models, the transition model is not intended to affect the way the employer may modify employees' classification, salary, or other terms and conditions of employment.

Memoranda of understanding in effect at the time of implementation of the trial court employee personnel system will remain in effect until their regularly scheduled expiration dates or until they are modified through the meet and confer process. When existing memoranda of understanding expire, if trial court employees' employment status were to be state, recognized court employee organizations would meet with the local trial court administration, with the involvement of the state judicial branch. If trial court employees' status were to be county, recognized court employee organizations would meet with the county and the local trial court administration. Under a court employment status, when existing memoranda of understanding expire, recognized court employee organizations would meet with the local trial court administration. (See Part VII.B, "Meet and Confer," for more specific information on the meet and confer process.)

Under the preliminary model, upon transition to the new trial court employee personnel system, the successor employer will continue to recognize any employee organization or exclusive representative previously recognized as representing trial court employees. Unrepresented employees will continue to be governed by their employer's personnel policies, procedures, and plans, which are subject to change. The act of transitioning to a new personnel system will not in itself trigger changes to these personnel policies, procedures, and plans, unless expressly specified by the new personnel system or by law. Both the classification and salary rate of trial court employees will remain in effect upon transition to a new personnel system.

Trial court employees' seniority credits will transfer to the successor employer upon transition to the new personnel system. For example, if a trial court employee worked for the county for six years and then became a court employee, the court would recognize that employee as entering the system with six years seniority. Similarly, if a court employee held a certain status immediately prior to the transition, such as the status of probationary, permanent, or regular employee, then

that employee would retain that same status upon transition. Thus, a probationary employee who had already completed seven months of a twelve-month probationary period would, at the time of transition, be credited with seven months time for purposes of the probationary period.

The unification transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) will not be changed as a result of implementation of the trial court personnel system.

At the time of publication of the second interim report, the task force was still deliberating a few outstanding transition issues. These issues included (1) the time for the successor employer to implement a support structure, (2) employees' mobility rights between the county and the court, (3) transfer of disciplinary actions, and (4) union security (agency shop) continuation. The task force resolved these issues in November 1999 and addresses them in the recommended version of the transition model.

#### **Additional Considerations and the Recommended Transition Model**

The task force's final transition recommendations are presented in the recommended model. This final set of recommendations assumes a court employment status. In addition to the issues covered in the preliminary model, the recommended model also addresses the issues of (1) agency shop, (2) giving consideration to contractual obligations and rights accrued by employees under their current systems, (3) disciplinary action initiated prior to implementation of the trial court employee personnel system, (4) transfers between the court and the county, and (5) the implementation date on which the new personnel system will go into effect.

An agency shop currently arises out of agreements or memoranda of understanding under the Meyers-Milias-Brown Act (MMBA) and Court Employee Labor Relations Rules. The task force recommends that any agency shop provisions previously agreed to continue to be honored under the new trial court personnel system for the duration of pertinent memoranda of understanding. The implementation of the trial court employee personnel system shall not in and of itself cause a new agency shop election. (See Part VII.B for more detailed information on the meet and confer process.)

The task force also recommends that consideration be given to existing contractual obligations and rights accrued by employees under their current systems when transitioning to the new personnel system. These contractual obligations and rights may be reconsidered, subject to meet and confer, as applicable.

In terms of transfer of disciplinary action, the task force recommends that disciplinary action taken before the implementation of the new trial court employee personnel system remain in effect. Any employee who has received disciplinary action or proposed disciplinary action before implementation of the new trial court employee personnel system and who has not yet exhausted any appeal or administrative remedies under the predecessor personnel system shall use only those appeal or administrative procedures available under the predecessor system. The ultimate disposition of the discipline shall be pursuant to the terms of the predecessor system.

The impact of the new employment protection system on past discipline is subject to meet and confer at the local level, as applicable (for example, how a particular type of discipline may be considered for purposes of future disciplinary action under the new employee protection system). The process for employees to appeal disciplinary decisions taken after implementation of the court's employment protection system will be in accordance with the court's employment protection system. Exceptions apply to a county of the first class as specified in Part VII.C, "Employment Protection System," of this report. Part VII.C. also discusses disciplinary issues in more detail.

With regard to trial court employees' transfer rights between the court and the county, the task force recommends that transfer policies in effect at the time of implementation of the new personnel system continue to apply for a period of two years, or until the existing pertinent memoranda of understanding expire, whichever is longer. These transfer rights are subject to county agreement and county charter provisions related to transfer policies. Also within this same time frame, the policies regarding trial court employees' ability to carry their seniority, accrued leave credits, and leave accrual rates with them upon transfer (portability rights) shall remain in effect, unless prohibited or limited by charter provisions, subject to county agreement. Any future transfer and portability rights following the expiration of existing memoranda of understanding or the end of a two-year period are subject to meet and confer at the local level, as applicable, as well as subject to local negotiations between the county and the court.

Regarding an implementation date for the new personnel system, the task force recommends that the new system become effective on the date legislation is enacted, or 90 days from the date that such legislation is chartered, whichever is later. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date. Certain pieces of the new personnel system may have slightly different effective dates as specified in particular models or as covered under pertinent memoranda of understanding. To avoid the unconstitutional impairment of contracts, where provisions of any

model are governed by existing memoranda of understanding, the implementation date shall be either the date a successor memorandum of understanding becomes effective or, lacking a successor memorandum, 90 days from the expiration date of the original memorandum. Representatives of the court and representatives of recognized employee organizations may mutually agree to different effective dates.

Some courts, by memoranda of understanding, have existing personnel systems that offer less protection than that contained in the new trial court employee personnel system, such as courts with at-will systems. Although not part of the model, the task force encourages such courts and recognized employee representatives to work together to implement the new trial court employment system as soon as possible following the legislative effective date.

Because transitioning to the new trial court employee personnel system will have a substantial impact on the courts and court employees, ongoing communication with employees will be a necessary priority for court administrators. (See Part X.B for more information regarding educating employees and other key constituencies about the work of the task force.)

<b>Recommended Transition Model</b>
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In addition to the transition recommendations addressed in other models, upon implementation of the trial court employee personnel system:

- I. All court employees who meet the definition of trial court employee who work for the court will be considered court employees.
- II. The terms of any memorandum of understanding shall remain in effect until the memorandum of understanding expires, is amended, or is replaced, subject to meet and confer. Upon expiration of memoranda of understanding, the court shall meet and confer with recognized court employee organizations.
- III. An employee organization that is recognized as a representative of a group of court employees or the exclusive representative of an established bargaining unit of court employees, either by the county or the court, shall be recognized by the court as a representative, or as the exclusive representative, of the same employees.
- IV. If the court is party to any memorandum of understanding with any bargaining unit that includes court employees and that provides for an agency shop provision, the court and employee organization representing the court employees shall be obligated to honor the terms of the agency shop provision (including indemnification provisions, if any) for the duration of the memorandum of understanding. The implementation of the trial court employee personnel system shall not in and of itself cause a new agency shop election.
- V. Unrepresented employees are governed by their employer's personnel policies, procedures, and plans. The implementation of the trial court employee personnel system shall not of itself be a basis for changing the employer's personnel policies, procedures, and plans except where otherwise required by the new trial court employee personnel system (for example, if the existing policies fail to meet standards established within the new personnel system) or by law. The court retains previously existing rights with respect to revising its personnel policies, procedures, and plans.
- VI. In establishing local personnel structures for trial court employees, consideration shall be given to contractual obligations, minimizing disruption of the trial court workforce, and protecting the rights accrued by employees under their current systems. This shall not be interpreted to

- mean that prior contractual obligations and rights may not be reconsidered subject to meet and confer, as applicable. Rather, it is intended to acknowledge that both parties should give consideration to past contractual obligations and rights.
- VII. Employment seniority of a court employee on the date of implementation of the trial court employee personnel system, as calculated under the predecessor system, shall be counted toward seniority with the court.
- VIII. The employment status of a court employee as a probationary, permanent, or regular employee shall remain in effect, and the employee shall continue to have that status as a court employee, so that probationary employees will not be required to serve a new probationary period but rather to complete the existing probationary period under the terms of hire, to the extent not prohibited by law.
- IX. The classification and salary rate of a court employee shall remain in effect, at the same classification and salary rate.
- X. Implementation of the trial court employee personnel system will not affect the transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) for purposes of unification.
- XI. Disciplinary action initiated before implementation of the trial court employee personnel system shall remain in effect. Until implementation of the court's employment protection system in accordance with the employment protection system model, any employee who has received disciplinary action or proposed disciplinary action but has not yet exhausted any appeal or administrative remedies under the predecessor personnel system shall use only those appeal or administrative procedures that are available pursuant to the predecessor personnel system. The ultimate disposition of the discipline shall be pursuant to the predecessor personnel system. Any discipline of an employee after the date of implementation of the court's employment protection system, in accordance with the employment protection system model, shall be determined pursuant to the terms of the court's employment protection system, including the administrative procedures contained therein, except in a county of the first class as specified in the employment protection system model. The impact of the court's new employment protection system on past discipline shall be subject to meet and confer, as applicable, at the local level.



- XII. Subject to county agreement and unless prohibited or limited by charter provisions, the policies regarding transfer between the court and the county that are in place upon implementation of the personnel system shall be continued while existing memoranda of understanding remain in effect or for two years, whichever is longer. Any further rights of trial court employees to transfer between the court and the county shall be subject to meet and confer, as applicable, at the local level between representatives of the court and representatives of recognized employee organizations and local negotiation between the court and the county. Subject to county agreement and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that are in effect upon implementation of the personnel system will be continued if trial court or county employees transfer between the court and the county or the county and the court while existing memoranda of understanding remain in effect or for a period of two years, whichever is longer. Any further right of trial court employees to portability is subject to meet and confer, as applicable, between representatives of the court and representatives of recognized employee organizations and local negotiation between the court and the county.
- XIII. Unless otherwise specified in individual models, the implementation date on which the system in each court shall go into effect is the latest date of the following: (a) the effective date of the legislation that enacts a personnel system for trial court employees; or (b) 90 days from the date that such legislation is chaptered. Representatives of the court and representatives of recognized employee organizations may mutually agree to a different effective date. If, however, the provisions of any model are governed by an existing memorandum of understanding covering court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding is effective or, if no agreement for a successor memorandum of understanding is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding unless representatives of the court and representatives of recognized employee organizations mutually agree otherwise.

## PART VIII

### ADVISORY VOTE AND PUBLIC ENTITY POLL

#### Background

The Act mandates that the Task Force on Trial Court Employees “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.”<sup>120</sup> The statute did not specify who would take the vote or when the vote would be taken, only that a method for taking the vote must be prepared. Although not specified by the statute, the task force initially planned to conduct the advisory vote of employees to help in the crafting of the final recommendations to the Legislature. The task force also decided to poll the preferences of the courts and the counties to assist in the formulation of the final recommendations.

The task force determined that, prior to asking the trial court employees and public entities to vote on their preferences, it would be necessary to finalize all components of a personnel structure under each status option (county, court, state, or other). Due to the volume and complexity of issues that needed to be resolved prior to the final report, it became increasingly clear that the task force could not finalize decisions on these issues in time to complete the advisory vote and the public entity poll before releasing the final report in December 1999.

Since the statute did not charge the task force with actually conducting the advisory vote but rather just to prepare a method, the task force concluded that its paramount objective was to produce its final report and recommendations by the end of 1999. After extensive discussions and careful consideration of all the options available, at the July 1999 meeting the task force voted without dissent not to conduct the advisory vote or public entity poll. The task force, however, determined that in accordance with the Act, it would “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county,”<sup>121</sup> as well as recommend a method for polling the trial courts and the counties. The assumptions and objectives guiding this recommended method are presented here.

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<sup>120</sup> Gov. Code, § 77603(h).

<sup>121</sup> *Ibid.*

**Assumptions and Objectives: Trial Court Employee Advisory Vote and Public Entity Poll**

The task force used the following assumptions and objectives in recommending a process for both the advisory vote of trial court employees and the public entity poll of court and county entities.

***Assumptions:***

1. As required by statute, the task force is to “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.”<sup>122</sup>
2. The Trial Court Funding Act requires agreement from the county and the courts in the county for county employment, and agreement from the state and the courts in the county for state employment; the vote must obtain information regarding second and third preferences.

***Objectives:***

- A. Prepare a method for obtaining information about employee preferences regarding employment status options, including second and third preferences.
- B. Prepare a method for obtaining information about counties’ and courts’ preferences and concerns regarding employment status options.
- C. Ensure that the method proposed provides education to employees, counties, and courts regarding the potential consequences of each status option.
- D. Ensure that the method proposed provides a neutral entity to administer the vote.

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<sup>122</sup> *Ibid.*

**Recommended Method: Trial Court Employee Advisory Vote and Public Entity Poll**

As required by the Act, the task force has prepared the following recommended method for conducting an advisory vote.

***Advisory Vote:***

- I. Employees who meet the task force's definition of trial court employee will be eligible to participate in the trial court employee advisory vote.
- II. The employment status options as defined by the task force will be the status options used in the trial court employee advisory vote.
- III. Employees will be provided with educational materials that will provide explanations of the employment status options. These educational materials will first have been reviewed by the task force.
- IV. A neutral entity, such as the State Mediation and Conciliation Service, will administer the trial court employee advisory vote and tabulate the results.

***Public Entity Poll:***

- I. Individual counties and trial courts will be eligible to participate in the public entity poll. The poll will be submitted to the court administrator and the county administrative officer.
- II. The employment status options as defined by the task force in its final report will be the status options used in the public entity poll.
- III. Counties and trial courts will be provided with educational materials that will provide explanations of the employment status options. These educational materials will first have been reviewed by the task force.
- IV. The public entity poll will obtain information about the positions of the trial courts and counties with respect to the employment status of trial court employees. Each public entity's response will identify the public entity and be publicly available.
- V. A neutral entity, such as the State Mediation and Conciliation Service, will administer the public entity poll and tabulate the results.

**Considerations: Trial Court Employee Advisory Vote and Public Entity Poll**

In developing the process for the trial court employee advisory vote and public entity poll, the task force established the following goals: (1) have an independent third party conduct the vote, (2) ensure that every employee receives a ballot, and (3) guarantee the validity of the vote. To meet these three goals, the task force recommends that a neutral agency experienced in administering employee votes conduct, tabulate, and report the votes.

The task force recognized that, for the advisory vote to be accurate and informative, the vote must be limited to those employees who would be included in the new trial court employee personnel system and whose status would be affected. It is necessary, then, to use the definition of *trial court employee* found in Part III of this report to determine which employees are eligible to participate in the advisory vote and which are not.

The task force recognized the importance of informing employees and public entities about the employment status options before asking them to indicate their preferences. The task force thus recommends undertaking an educational effort to clarify the impact of the employment status options for affected parties. In an attempt to make the most accurate educational materials available to trial court employees, the task force recommends that the task force have the opportunity to review any educational materials prior to distribution.

In November 1999, the task force voted unanimously to recommend a court employment status option for all trial court employees. This status option is the only one that does not require the concurrence of either the state or the county. Given the unanimous vote of the task force, which includes court, county, and state representation as well as extensive labor representation, if the Legislature accepts the task force's recommendations, an advisory vote may not be necessary.

## **PART IX**

### **TRIAL COURT EMPLOYEE SURVEY AND DOCUMENTATION**

#### **Background**

The Act established the Task Force on Trial Court Employees and mandated that it complete the following tasks, as specified in the Act:<sup>123</sup>

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;
- Identify functions relating to trial courts that are provided by county employees.

#### **Assumptions and Objectives: Trial Court Employee Survey**

The task force's objectives in developing the Trial Court Employee Survey were to:

- Meet the statutory requirements of the Act;
- Document current personnel data;
- Obtain data to use as a foundation for recommendations; and
- Determine the baseline to use in anticipating the impact of any changes.

#### **Education: Trial Court Employee Survey**

The task force received education about the survey process and methodology from Mr. Drew James, an actuarial consultant with the firm of William M. Mercer, Inc. The consultant presented information about the content and structure of the survey and provided a summary of the survey questions related to classification, pay and benefits, memoranda of understanding, retirement, and employment status.

#### **Pilot Testing**

To determine ways to improve the survey instrument, the Trial Court Employee Survey was pilot tested in two urban courts, one suburban court, and two rural courts. The feedback, suggestions, and problems identified in the pilot test were addressed to the extent possible in the final survey sent to all trial courts.

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<sup>123</sup> Gov. Code, §§ 77600–77606.

**Trial Court Employee Survey**

The Administrative Office of the Courts (AOC), in conjunction with the task force, retained William M. Mercer, Inc. (Mercer), a consulting firm, to design the survey and conduct related analyses so that the task force would have access to the trial court employee information mandated by the Act.

The task force submitted the Trial Court Employee Survey to all trial court executive officers. For the task force to make appropriate recommendations, it was essential that the needs and interests of the entire court system, which includes approximately 18,000 trial court employees in 58 county systems, be considered. Among the courts, there are different classification systems, salaries, benefits, retirement systems, and memoranda of understanding. This state-mandated survey was the principal means by which the task force obtained data about personnel and benefits systems currently in place in the trial courts.

The survey necessitated obtaining information about memoranda of understanding, retirement plans, benefits, salaries, and classifications. Much of this information resides in the 58 county personnel offices. The enormity and complexity of the questions resulted in a survey process that was time consuming and challenging for all trial courts to complete; analysis of this personnel information is ongoing.

In addition, to obtain the information described above, the Act requires the task force to document local retirement systems and determine the costs associated with a change in retirement benefits<sup>124</sup>; the survey data provided the information needed to perform these actuarial calculations.

The Judicial Council is currently using the trial court employees' salary and classification data from the survey in anticipation of developing a system of uniform court employee classifications. After giving consideration and due weight to the final report of the task force, the Judicial Council will recommend to the Legislature a system of uniform court employee classification. The classifications will include duty statements, minimum qualifications, and salary ranges.<sup>125</sup> (See the salary and classification models recommended to the Judicial Council in Part VII.A and B).

**Confidentiality**

Trial courts expressed concern about privacy and confidentiality of personnel information. The Administrative Office of the Courts and the consultant, Mercer, expressed their commitment to the trial courts to protect confidential survey information related to trial court employees. In addition, the use of social security

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<sup>124</sup> Gov. Code, § 77603(b–c).

<sup>125</sup> Gov. Code, § 77605(a).

numbers was not permitted in any part of the survey. Data regarding individual court employees will not be released.

**Survey Definition of Court Employee**

The Trial Court Employee Survey required that all information be completed based on the task force's definition of a trial court employee. (See Part III for the definition used in the survey.)

**Survey Reporting Date: June 30, 1998**

June 30, 1998, was the "snapshot" date all trial courts used in completing the survey questionnaire. The June 30, 1998, date was chosen unanimously by the task force because it was the last date for which the trial courts had complete fiscal year records at the time the survey was taken. The task force considered the complicating effect of unification and determined that this date was the most appropriate date for obtaining complete and accurate documentation from all trial courts. Trial courts were instructed in the survey to provide a cover letter explaining any significant or noteworthy changes that occurred after June 30, 1998. Examples of such changes include substantial salary increases, significant changes in job classification specifications, or changes resulting from a large classification study.

**Description of Survey Information**

The Trial Court Employee Survey requested information from trial courts about the following:

- Trial court employee bargaining units, memoranda of understanding, recognized bargaining agents, and unrepresented employees;
- Classification; salary; employment status; demographic information (for retirement purposes); and retirement benefits, funding, and administration of court employees;
- Medical, dental, vision, paid time off, long-term disability, life insurance, and other employer-provided benefits for active employees;
- Health and welfare benefits court employees would be entitled to when they retire;
- Deferred compensation plans, including 401(k) and 457 non-core retirement plans;
- Functions provided to the court by non-court employees (county employees, temporary agency employees, independent contractors, or others);
- Funded but vacant positions, to ensure that all possible classifications are identified; and
- Aggregate information about specified non-court employees.



**Survey Addendum**

As a result of educational sessions with retirement and deferred compensation experts, the task force determined that an addendum to the survey was required to obtain additional, more comprehensive information about non-core retirement benefits such as 457, 401(k), and other non-core retirement plans. These plans are often referred to as deferred compensation plans. The original survey requested only general information regarding non-core retirement plans to which the employer contributed on behalf of the employee. The survey addendum requested more detailed information about the plans and information about all non-core retirement plans, whether or not the employer makes a contribution to the plan on behalf of the employee. The Addendum Survey requested information for each non-core retirement plan provided to court employees as of June 30, 1999, not as of the June 30, 1998, date used for the original Trial Court Employee Survey.

The articulated goal of the task force is to protect the benefits of current employees. To ensure that no trial court employee is negatively affected by any change in employment status, more detailed information about all non-core retirement plans was required, whether or not the employer provides a contribution. The information provided in response to the survey addendum was critical to decisions the task force made to ensure that no trial court employee would be negatively affected by any change in employment status.

**Union Verification Process**

The task force wanted to provide each union or association that represents trial court employees the opportunity to review survey response data relating to the particular union's or association's memoranda of understanding. This information includes only aggregate data, not individual employee information. In July 1999, parts of the survey containing information about represented employee groups and some general census data relating to employees of the particular union or association were provided to each union or association. In October 1999, the remaining information from the survey was provided for review to each union or association representing trial court employees. This review process is still taking place and has not been completed as of the date of publication of this final report.

**Court Verification Process**

The task force felt it was also important for the courts to have an opportunity to review and verify the survey data to ensure a complete and accurate database of information. This review process by the courts is still taking place and has not been completed as of the date of publication of this final report.

**Addendum to the Final Report**

An addendum to the final report will be issued at the time that these verification processes have been completed. This addendum will include survey reports of the

data collected on court employee status, classification, salary, local retirement systems, benefits, and functions relating to trial courts that are provided by county employees, and the actuarial analysis.

**Documentation of Provisions Relating to Trial Court Employee Classification, Compensation, and Benefits**

The Act states that one of the duties of the task force is to “[d]ocument existing constitutional, statutory, and other provisions relating to classification, compensation, and benefits of court employees.”<sup>126</sup> To fulfill this mandate, staff to the task force documented existing constitutional provisions, statutes, and California Rules of Court relating to trial court employees’ classifications, compensation, and benefits.

Documentation of such existing law is included in the appendix to this report. The California State Association of Counties (CSAC) reviewed county charter provisions and found none that impacted trial court employees in the proposed new system.

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<sup>126</sup> Gov. Code, § 77603(e).

## **PART X**

### **ONGOING WORK OF THE TASK FORCE**

While this report represents the final recommendations of the task force for a new personnel structure for trial court employees, two areas remain where the work of the task force will continue. These two areas are (1) drafting legislation and (2) education. The task force will continue to meet during the first few months of 2000 to review draft legislative language and to ensure that key constituent groups receive helpful informational materials regarding the task force's recommendations.

## **A. Drafting Legislation**

The task force has spent 18 months developing its recommendations to the Legislature establishing a new personnel structure for trial court employees. These recommendations have been the result of significant discussions to find ways to accommodate all of the competing interests represented on the task force. The wording contained in the models was carefully crafted as a result of input from all task force members. The task force was concerned that the legislation implementing its recommendations accurately reflect its intent. Therefore, the task force developed a process for drafting and approving the proposed legislation prior to submission to the Legislature. This recommended process is presented below.

### ***Objective:***

To ensure that legislative language accurately reflects the intent of the task force in designing all trial court employee personnel system assumptions, objectives, and models.

### ***Process:***

1. This legislation shall be known as the Court Employment Protection and Governance Act.
2. The draft proposed legislation prepared by staff shall be reviewed by the task force for form, content, and consistency with the task force's recommendations.
3. Task force members will remain available for consultation from January through March 2000.
4. Staff may use consultants to assist them in drafting the legislation.
5. Task force members shall be given an opportunity to review the proposed language, seek advice from counsel, and provide input to the task force to ensure consistency with the task force's recommendations and intent prior to the legislation's submission to the Legislative Counsel.

**B. Education**

The task force has worked hard to create a new trial court employee structure that minimizes disruptions to the trial courts and to trial court employees. Nonetheless, the recommendations described in this report do entail many changes to the way courts have operated in the past. The task force recognizes that ongoing communication with key constituencies is needed to facilitate a smooth transition to the new personnel system.

The task force has identified several key groups that should receive education on its recommendations, including court employees, court administrators, judges, county agents, and certain state executive branch agencies. Some of the contemplated methods for keeping various constituent groups informed include maintaining a Web site to help answer frequently asked questions, developing a comprehensive educational packet for distribution, inserting informational pamphlets with court employees' paychecks, and taking advantage of existing resources (for example, labor organizations and professional associations) to help disseminate information.